







GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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THE  
UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL :  
WITH CHRONOLOGICAL TABLE OF ALL  
UNREPEALED ACTS PASSED BY THE  
GOVERNOR GENERAL IN COUNCIL AND  
AN INDEX.

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From 1834 to 1872, both inclusive.

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VOL. I.

FIFTH EDITION.

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## PREFACE.

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THIS, the fifth edition of the Unrepealed General Acts, is based on the last edition published in 1909. It has been brought down to the end of the year 1927.

2. Like the former edition the present edition consists of such of the Acts passed by the Governor General in Council as are still in force and which extend to the whole of British India, or which already extend to the greater portion of British India and contain a provision admitting of their extension to the rest of British India or which apply to the Presidency-towns. The Acts which have not been reprinted in these volumes are either (a) General Acts of a purely private character, *e.g.*, Acts V of 1857, VIII of 1864 and IX of 1867; (b) Acts which are now in force in so limited an area as to make their reproduction hardly necessary; (c) Acts which, although not actually repealed *in toto*, are practically a dead letter; or (d) the Indian Penal Code, the Code of Criminal Procedure and the Code of Civil Procedure of which separate modified editions are issued by this Department from time to time. The first volume contains the Unrepealed General Acts passed during the years 1834 to 1872.

3. As in the older edition footnotes have been added containing references to show where Statements of Objects and Reasons, the Reports of the Select Committee (when such have been published) and the Debates or Proceedings in Council connected with each Act passed during and after the year 1862 are to be found in the Gazette. These references, although they cannot be used judicially,\* may be of use to the student and the practitioner. Footnotes have also as in that edition been given explaining the changes made by later legislation, these in the text are indicated by asterisks where matter has been repealed, and where it has been added or substituted such additions or substitutions are shown in square brackets; the footnotes to repeals and substitutions give the original words of the Act which are thus affected unless they are of inconvenient length.

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\* *Vide* judgment of the Privy Council in the *Administrator-General of Bengal v. Premal Mullick*, I. L. R. 22 Cal., at pp. 798 and 799; also *Norendra Nath Sirkar v. Kamalbasini Dasi*, I. L. R. 23 Cal., p. 563, and *Tagliano v. Bank of England* (1891), A. C., at p. 145.

4. Footnotes have also been added, which are chiefly (a) cross-references to Indian Acts; (b) references to English Statutes on which Indian Acts are based; (c) references to notifications in Indian Gazettes regarding the commencement, extension and application of some of the more important provisions; and (d) references to Rules and Orders made under Acts and published in the Gazettes or in the Collections of Local Rules and Orders published by Local Governments and in the volumes of General Statutory Rules and Orders.

5. The side-notes in connection with Acts prior to Act XV of 1854 have been added since their enactment. The practice, however, beginning with that Act, has been changed and side-notes have regularly been added to all Bills as introduced and have remained in them during their passage through Council and into Law.

6. The Chronological Table prefixed to each volume is a table of the unrepealed Acts of the Governor General in Council embraced in the period covered by the volume with the exception of those that are included in the Local Codes or printed separately. A brief index has been added at the end of each volume and a general or consolidated index to the entire edition at the end of the last Volume.

7. The Acts included in the first volume have been printed as modified up to the end of 1927.

A. L. BANERJEE,  
*Assistant Secretary,  
Legislative Department,  
Government of India.*

SIMLA, 1

*The 25th September, 1928.*

## LIST OF ABBREVIATIONS USED.

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Aj. Code . . . . .	For Ajmer Code.
B. and O. Code . . . . .	„ Bihar and Orissa Code.
Bal. Code . . . . .	„ Baluchistan Code.
Ben. Code . . . . .	„ Bengal Code.
Bom. Code . . . . .	„ Bombay Code.
Bur. Code . . . . .	„ Burma Code.
C. Provs. Code . . . . .	„ Central Provinces Code.
Mad. Code . . . . .	„ Madras Code.
P. and N.-W. Code . . . . .	„ Punjab and North-West Code.
U. P. Code . . . . .	„ United Provinces Code.
Coll. Stat. Ind. . . . .	„ Collection of Statutes relating to India.
Gen. R. and O. . . . .	„ General Statutory Rules and Orders.
Ben. R. and O. . . . .	„ Bengal List of Local Statutory Rules and Orders.
Bom. R. and O. . . . .	„ Bombay List of Local Rules and Orders.
C. P. R. and O. . . . .	„ Central Provinces List of Local Rules and Orders.
Mad. R. and O. . . . .	„ Madras List of Local Rules and Orders.
Punj. R. and O. . . . .	„ Punjab List of Local Rules and Orders.
U. P. R. and O. . . . .	„ United Provinces List of Local Rules and Orders.
Bur. R. M. . . . .	„ Burma Rules Manual.
Brit. Enact., N. S. . . . .	„ British Enactments in force in Native States.



# CHRONOLOGICAL TABLE OF THE \*UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1834—72.

With respect to the entries in the fourth column regarding repeals, it may be noted :—

- (a) Partial repeals covered by later partial repeals are not noted.
- (b) Where an Act has been locally repealed and afterwards repealed by an Act whose operation is unrestricted the later repealing Act has alone been noted.
- (c) Local repeals covered by later local repeals are not noted.

(1) Acts which have been wholly repealed, and (2) Acts which apply to the Straits Settlements only and are therefore not in force within the present limits of British India, are not included in these tables.

*(The references to pages in the fifth column are to pages of this Volume.)*

1	2	3	4	5
Year.	No	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1834	II	The Secretaries to Government Act, 1834.	Short title given, Act 14 of 1897. Rep. in part Act 10 of 1914, s. 3, Sch. II.	1
1837	IV	The Property in Land Act, 1837.	Short title given, Act 14 of 1897 Rep. in part, Act 16 of 1874.  Declared in force-- throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 : in the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3.	2
1838	XXV	The Wills Act, 1838	Short title given, Act 14 of 1897. Rep. (except as to wills made before 1st January, 1860), Act 8 of 1868. Rep. in part, Act 12 of 1891. Rep. in part, Act 10 of 1914. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	Not reproduced being practically spent.

\* N.B.—For a complete Chronological list of all the Acts of the Governor General in Council and of the Indian Legislature whether repealed or unrepealed, see the Chronological Tables of the Indian Statutes, Vol. I.

**UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—contd.**

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1829	XXIX	The Dower Act, 1839 .	Short title given, Act 14 of 1897. Rep. (except as to marriages contracted before 1st January, 1866), Act 8 of 1868. Rep. in part, Act 12 of 1891. Rep. in part, Act 10 of 1914. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	3
"	XXX	The Inheritance Act, 1839.	Short title given, Act 14 of 1897. Rep. (except as to intestacies occurring before 1st January, 1866), Act 8 of 1868. Rep. in part, Act 12 of 1891. Rep. in part, Act 10 of 1914. Supplemented, Act 28 of 1866, s. 29. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	Not reproduced being practically spent.
"	XXXII	The Interest Act, 1839 .	Short title given, Act 14 of 1897. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	6
1841	X	The Indian Registration of Ships Act, 1841.	Short title given, Act 14 of 1897. Rep. in part, Act 16 of 1874 ; Ss. 15 and 23, rep. in part, Act 10 of 1914. Rep. in part and amended, Act 11 of 1850 ; Act 7 of 1891. Amended, Act 5 of 1883, s. 38. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	7
"	XXIV	The Illusory Appointments and Infants' Property Act, 1841.	Short title given, Act 14 of 1897. Rep. in part, Act 27 of 1866 ; Act 8 of 1868 ; Act 16 of 1874 ; Act 12 of 1891.	25



**UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.***

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1843	V	The Indian Slavery Act, 1843.	Short title given, Act 14 of 1897. Rep. in part, Act 16 of 1874.  Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; in the Chittagong Hill-tracts, Reg. 1 of 1900, s. 4 ; in the Arakan Hill District, Reg. 1 of 1916, s. 2 ; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; in British Baluchistan, Reg. 2 of 1912, s. 3 ; in Kachin Hill-tracts, as regards Hill-tribes, Reg. 1 of 1895, s. 3 ; in Chin Hills as regards Hill tribes, Reg. 5 of 1896, s. 3.	29
1846	I	The Legal Practitioners Act, 1846.	Short title given, Act 14 of 1897. Rep. in part, Act 16 of 1874 ; Act 12 of 1876. Rep. in part and amended, Act 12 of 1891. Amended, Act 20 of 1853, s. 4. Rep. (locally), Act 20 of 1865 ; Act 18 of 1879, s. 42 ; (inserted by Act 9 of 1881, s. 9.) Rep. (in Burma), Act 13 of 1898, s. 18. Rep. excepting s. 5 (in Bombay) Bom. Act 17 of 1920. Declared in force throughout the Presidencies of Madras and Bombay, except as regards the Scheduled Districts, Act 15 of 1874, ss. 4 & 5.	31
1848	XV	The Supreme Courts' Officers Trading Act, 1848.	Short title given, Act 14 of 1897. Rep. in part, Act 12 of 1876.	33

**UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.***

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1850	V	The Indian Coasting Trade Act, 1850.	Short title given, Act 14 of 1897. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	34
"	XI	The Indian Registration of Ships Act (1841) Amendment Act, 1850.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	35
"	XII	The Public Accountants' Defaults Act, 1850.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870. Rep. in part (locally in Bombay), Bom. Act 5 of 1879. Rep. (locally in Assam), Reg. 1 of 1886. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; in Upper Burma (except the Shan States) Act 13 of 1898, s. 4.	36
"	XVIII	The Judicial Officers' Protection Act, 1850.	Short title given, Act 14 of 1897. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; in the Arakan Hill District, Reg. 1 of 1916, s. 2 ; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; in British Baluchistan, Reg. 2 of 1913, s. 2 ; in the Angul District, Reg. 3 of 1913, s. 3 ; (See next page.)	38

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1850	XVIII— <i>contd.</i>	The Judicial Officers' Protection Act, 1850— <i>contd.</i>	Declared in force— in Chin Hills as regards Hill-tribes, Reg. 5 of 1898, s. 3. in the Chittagong Hill-tracts Reg. 1 of 1900, s. 4. in the Pargana of Manpur, Reg. II of 1926, s. 2.	
"	XIX	The Apprentices Act, 1850.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870 ; Act 16 of 1874 ; Act 21 of 1923. Amended, Act 12 of 1891.	40
"	XXI	The Caste Disabilities Removal Act, 1850.	Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	
"	XXXIV	The State Prisoners Act, 1850.	Short title given, Act 14 of 1897. Rep. in part, Act 12 of 1891. Supplemented, Act 3 of 1858. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 1 ; in British Baluchistan, Reg. 2 of 1913, s. 3. in the Angul District, Reg. 3 of 1913, s. 3. in the Chittagong Hill-tracts, Reg. 1 of 1900, s. 4. in the Pargana of Manpur, Reg. II of 1926, s. 2.	48
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UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1850	XXXVII	The Public Servants (Inquiries) Act, 1850.	Short title given, Act 1 of 1897. Rep. in part, Act 14 of 1870 ; Act 16 of 1874 ; Act 12 of 1876 ; Rep. in part (locally), Act 16 of 1868. Amended, Act 1 of 1897. Act 10 of 1914.  Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	51
1851	VIII	The Indian Tolls Act, 1851.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870 ; Act 12 of 1876. Act 2 of 1901. Act 38 of 1920. Rep. in part, amended and supplemented, Act 8 of 1888. Amended (locally), Act 15 of 1864. Rep. (in Bombay), Bom. Act 3 of 1875. Supplemented, Act 8 of 1902.  Declared in force— in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in the Central Provinces and the Sambalpur District (except s. 1 and the Schedule), Act 20 of 1875, s. 3 ; in Upper Burma (except the Shan States), with a modification, Act 13 of 1898, s. 4. in the Punjab, Act 8 of 1888, s. 1.	56
1852	VIII	The Sheriffs' Fees Act, 1852.	Short title given, Act 14 of 1897.	59

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1853	II	The Landholders' Public Charges and Duties Act, 1853.	Short title given, Act 14 of 1897. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3. in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	61
„	XX	The Legal Practitioners Act, 1853.	Short title given, Act 5 of 1897. Rep. in part, Act 14 of 1870. Rep. (locally), Act 20 of 1865 ; Act 9 of 1884, Act 13 of 1898 S. 2 rep. in Bom., Bom. Act 17 of 1920. Declared in force throughout the Presidencies of Madras and Bombay, except as regards the Scheduled Districts, Act 15 of 1874, ss. 4 & 5.	63
1854	XXXI	The Conveyance of Land Act, 1854.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870 ; Act 16 of 1874 ; Act 12 of 1876. Rep. in part (locally), Act 4 of 1882. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	64
1855	XI	The Mesne Profits and Improvements Act, 1855.	Short title given, Act 14 of 1897. Rep. in part (locally). Act 4 of 1882. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	69

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1855	XII	The Legal Representatives' Suits Act, 1855.	Short title given, Act 14 of 1897. Rep. in part, Act 9 of 1871. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3; in the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4; in the Angul District, Reg. 3 of 1913, s. 3.	71
"	XIII	The Indian Fatal Accidents Act, 1855.	Short title given, Act 14 of 1897. Rep. in part, Act 9 of 1871, Act 10 of 1914. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3; in the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4; in the Angul District, Reg. 3 of 1913, s. 3.	73
"	XXIII	The Mortgaged Estates Administration Act, 1855.	Short title given, Act 14 of 1897. Rep. in part, Act 16 of 1871. Rep. (except as to descents or devises occurring or made before 1st January, 1866), Act 8 of 1868. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1871, s. 3.	75
"	XXIV	The Penal Servitude Act, 1855.	Short title given, Act 11 of 1897. Rep. in part, Act 12 of 1867; Act 13 of 1870; Act 5 of 1871; Act 16 of 1874; (See next page.)	76

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1855	XXIV — <i>contd.</i>	The Penal Servitude Act, 1855— <i>contd.</i>	Rep in part, Act 12 of 1870 ; Act 12 of 1891 ; Act 10 of 1914. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4. in British Baluchistan, Reg. 2 of 1913, s. 3.	
"	XXVIII	The Usury Laws Re- peal Act, 1855.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870. Declared in force through- out British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	79
1856	IX	The Indian Bills of Lading Act, 1856.	Short title given, Act 14 of 1897. Declared in force through- out British India, except as regards the Scheduled Dis- tricts, Act 15 of 1874, s. 3.	81
"	XI	The European Deser- ters Act, 1856.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870 ; Act 12 of 1873 ; Act 16 of 1874. Amended, Act 10 of 1927. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3.	83

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1856	XV	The Hindu Widows' Re-marriage Act, 1856.	Short title given, Act 14 of 1897. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in the Angul District, Reg. 3 of 1913, s. 3.	86
1857	II	The Calcutta University Act, 1857.	Short title given, Act 14 of 1897. Rep. in part, Act 12 of 1876 ; Act 12 of 1891 ; Act 8 of 1904. Amended, Act 7 of 1921 Supplemented, Act 8 of 1904.	89
"	XXII	The Bombay University Act, 1857.	Short title given, Act 14 of 1897. Rep. in part, Act 12 of 1876 ; Act 12 of 1891 ; Act 8 of 1904. Supplemented, Act 8 of 1904.	95
1858	III	The State Prisoners Act, 1858.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870 ; Act 12 of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. III of 1899, s. 3 ; in Upper Burma (except the Shan States). (s. 5), Act 13 of 1898, s. 1 ; in British Baluchistan, (s. 5) Reg. 2 of 1913, s. 3 ; in the Angul District, Reg. 3 of 1913, s. 3 ; in the Chittagong Hill-tracts, Reg. I of 1900, s. 4. in the Pargana of Manpur, Reg. 2 of 1926, s. 2.	100



UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1859	IX	The Forfeiture Act, 1859.	Short title given, Act 14 of 1897. Rep. in part, Act 8 of 1868 ; Act 12 of 1891. Ss. 16-18 and 20 declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 ; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; in British Baluchistan (except the last para. of s. 18), Reg. 2 of 1913, s. 3.	102
1860	IX	The Employers and Workmen (Disputes) Act, 1860.	Short title given, Act 14 of 1897. Rep. in part, Act 9 of 1871 ; Act 38 of 1920. Declared in force in— the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; British Baluchistan, Reg. 2 of 1913, s. 3.	104
"	XXI	The Societies Registration Act, 1860.	Short title given, Act 14 of 1897. Rep. in part, Act 16 of 1874. Amended, Act 22 of 1927. S. 14 amended, (locally), Bom. Act 2 of 1912. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4. in British Baluchistan, Reg. 2 of 1913, s. 3.	105.
"	XXXIV	The Government Officers' Indemnity Act, 1860.	Short title given, Act 14 of 1897.	111
1861	V	The Police Act, 1861	Short title given, Act 14 of 1897. Rep. in part, Act 9 of 1871 ; Act 16 of 1874 ; Act 10 of 1882 ; Act 10 of 1914. (See next page.)	112

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1861	V— <i>contd.</i>	The Police Act, 1861 — <i>contd.</i>	Rep. in part in the former Province of Bengal (except the Sambalpur District), Ben. Act 7 of 1869; Rep. in part in Rangoon, Bur. Act 4 of 1899, s. 2, (and see ss. 3, 4). Rep. in part and amended; in N. W. F. P., Reg. 7 of 1901, ss. 3, 13. Amended in its application to Burma by Bur. Act 6 of 1925. Amended, Act 3 of 1888; Act 8 of 1895; Act I of 1903. Act 4 of 1914. Act 10 of 1914; Act 38 of 1920. Supplemented, Ben. Act 7 of 1869. Portions extended to Calcutta and Suburbs, with modifications, Ben. Act 1 of 1898. Declared in force in— the Santhal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3; the Arakan Hill District, Reg. 1 of 1916, s. 2. Upper Burma (except the Shan States) Act 13 of 1898, s. 4; British Baluchistan, Reg. 2 of 1913, s. 3; the Angul District, Reg. 3 of 1913, s. 3; the Chittagong Hill-tracts, Reg. I of 1900, s. 4; the Pargana of Manpur, Reg. 2 of 1926, s. 2.	
"	XVI	The Stage-Carriages Act, 1861.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1879; Act 10 of 1914. Rep. in part, and amended, Act 1 of 1898. Rep. in Madras by Mad. Act 3 of 1924. Amended, Act 16 of 1876. Amended (locally), Pun. Act 3 of 1924. Declared in force in British Baluchistan, Reg. 2 of 1913, s. 3.	131

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject	How repealed or otherwise affected by legislation.	Page.
1862	III	The Government Seal Act, 1862.	Short title given, Act 14 of 1897. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	137
1863	XVI	The Excise (Spirits) Act, 1863.	Short title given, Act 14 of 1897. Rep. in part, Act 12 of 1891. Amended, Act 8 of 1894. Rep. (in Madras), Mad. Act I of 1886, Sch. as amended by Mad. Act I. of 1913, s. 23. Rep. (in Bombay Presidency), Bom. Act 12 of 1912, s. 42. Rep. (in Bengal Presidency, in Behar and Orissa and in Assam), Ben. Act 5 of 1909, s. 93, E. B. and A. Act I of 1910, s. 2. Rep. (in United Provinces), U. P. Act 4 of 1910, s. 2. Rep. (in Punjab), Punj. Act I of 1914, s. 2. Rep. (in Central Provinces), C. P. Act 2 of 1915. Rep. (in Burma), Bur. Act 5 of 1917. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	138
"	XX	The Religious Endowments Act, 1863.	Short title given, Act 14 of 1897. Rep. in part, Act 7 of 1870 ; Act 14 of 1870 ; Act 16 of 1874 ; Act 10 of 1914. Rep. (in Madras as to Hindu religious endowments) Mad. Act 2 of 1927. Amended, Act 12 of 1891. Act 21 of 1925. Extended to the Kanara District, Bom. Act 7 of 1865.	141
"	XXIII	The Waste Lands (Claims) Act, 1863.	Short title given, Act 14 of 1897. Rep. in part, Act 9 of 1871. Act 10 of 1914.  (See next page.)	148

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1863	XXIII — <i>contd.</i>	The Waste Lands (Claims) Act, 1863— <i>contd.</i>	Rep. in part, and amended, Act 4 of 1914. Rep. in part, (in U. P.), U. P. Act 12 of 1922. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	156
"	XXXI	The Official Gazettes Act, 1863.	Short title given, Act 14 of 1897. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	158
1864	III	The Foreigners Act, 1864.	Short title given, Act 14 of 1897. Rep. in part, Act 10 of 1914. Amended, Act 3 of 1915. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3 : in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 : in the Arakan Hill District, Reg. 1 of 1916, s. 2. in Upper Burma (except the Shan States), Act 13 of 1898, s. 1 : in British Baluchistan, Reg. 2 of 1913, s. 3 : in the Angul District, Reg. 3 of 1913, s. 3.	160
"	XV	The Indian Tolls Act, 1864.	Short title given, Act 14 of 1897. Rep. in part, and amended, Act 38 of 1920. Supplemented, Act 8 of 1888. Declared in force— in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3.	166

(See next page.)

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1864	XV— <i>contd.</i>	The Indian Tolls Act, 1864— <i>contd.</i>	Declared in force— in the Central Provinces, and the Sambalpur district, Act 20 of 1875, s. 3; in the Punjab, Act 8 of 1888, s. 1. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	
1865	III	The Carriers Act, 1863.	Rep. (as to carriers by rail) Act 9 of 1890. Rep. in part, Act 10 of 1914. Rep. in part and amended, Act 13 of 1921. Amended, Act 10 of 1899. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3; in Upper Burma (except the Shan States), Act 13 of 1898, s. 1.	168
"	XV	The Parsi Marriage and Divorce Act, 1865.	Rep. in part, Act 11 of 1870; Act 12 of 1876; Act 10 of 1914. Amended, Act 6 of 1886; Act 38 of 1920; Act 20 of 1922. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3, in British Baluchistan, Reg. 2 of 1913, s. 3.	172
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.	Rep. in part, Act 7 of 1870; Act 16 of 1874; Act 12 of 1891; Act 10 of 1914. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3; in the Santhál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1889, s. 3.	185

# UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1866	XXV	The Unclaimed Deposits Act, 1866.	Short title given, Act 14 of 1897. Rep. in part, Act 24 of 1867; Act 16 of 1874; Act 12 of 1876; Act 12 of 1891. Supplemented, Act 5 of 1870.	193
"	XXVII	The Indian Trustees Act, 1866.	Rep. in part, Act 14 of 1870; Act 16 of 1874; Act 10 of 1914; Act 18 of 1919; Act 11 of 1923. Rep. in part (locally), Act 4 of 1882. Amended, Act 32 of 1925. Act 34 of 1926. Amended (in Lower Burma), Act 6 of 1900, s. 47. S. 35 ext. Act 3 of 1909, s. 119.	195
"	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.	Rep. in part, Act 16 of 1874; Act 7 of 1882; Act 18 of 1919; Act 11 of 1923. Rep. in part (locally), Act 2 of 1882. Amended, Act 32 of 1925. Act 34 of 1926. Amended (in Lower Burma), Act 6 of 1900, s. 47. Declared in force throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3.	214
1867	XVI	The Acting Judges Act, 1867.	Short title given, Act 14 of 1897.	233
"	XXII	The Sanāis Act, 1867	Rep. in part, Act 12 of 1891, Act 10 of 1914.	234
"	XXV	The Press and Registration of Books Act, 1867.	Short title given, Act 14 of 1897. Rep. in part, Act 14 of 1870; Act 3 of 1914. Rep. in part and amended, Act 10 of 1890; Act 12 of 1891; Act 10 of 1911. Amended, Act 11 of 1915; Act 38 of 1920; Act 14 of 1922; Act 11 of 1923.	239
(See next page.)				

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1867	XXV — <i>contd.</i>	The Press and Registration of Books Act, 1867— <i>contd.</i>	Local Government empowered to annul declarations made under, and s. 15 ext., Act 7 of 1908, ss. 7, 8. Declared in force— throughout British India, except as regards the Scheduled Districts, Act 15 of 1874, s. 3; in the Santhāl Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3; in Upper Burma (except the Shan States), Act 13 of 1898, s. 1.	
1869	IV	The Indian Divorce Act	Rep. in part, Act 7 of 1870; Act 12 of 1873; (in Punjab), Act 18 of 1884; (in the Central Provinces and the District of Sambalpur), Act 4 of 1901; Amended, Act 6 of 1909; Act 10 of 1912; Act 18 of 1919; Act 11 of 1923; Act 32 of 1925; Act 25 of 1926; Act 34 of 1926; Act 15 of 1927; Act 30 of 1927. Amended (in Lower Burma), Act 11 of 1889, s. 97 (rep. by Act 6 of 1900), and Act 6 of 1900, s. 47. (in Burma), Bur. Act 11 of 1922. Declared in force— in the Santhāl Pargannas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in the Angul District, Reg. 3 of 1913, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 1. in British Baluchistan, Reg. 2 of 1913, s. 3.	250

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1870	V	The Unclaimed Deposits Act, 1870.	Short title given, Act 14 of 1897. Rep. in part, Act 2 of 1874 ; Act 16 of 1874.	281
"	VII.	The Court-fees Act, 1870	Rep. in part, Act 14 of 1870 ; Act 8 of 1871 ; Act 13 of 1889 ; Act 8 of 1890 ; Act 18 of 1923. (in Punjab), Act 17 of 1887. Rep. in part and amended, Act 20 of 1870 ; Act 6 of 1889 ; Act 12 of 1891 ; Act 5 of 1908 ; Act 38 of 1920. Amended, Act 15 of 1872 ; Act 13 of 1875 ; Act 7 of 1889 ; Act 11 of 1899 ; Act 10 of 1901 ; Act 6 of 1905 ; Act 7 of 1910 ; Act 14 of 1911 ; Act 17 of 1914 ; Act 24 of 1917 ; Act 18 of 1919 ; Act 19 of 1922 ; Act 11 of 1923 ; Sch. I, art. 13 rep. (in Punjab), Punj. Act 1 of 1912, s. 5. (as substituted by Punj. Act 4 of 1912). S. 7 (v) (b) am., (in Punjab), Punj. Act 3 of 1914, s. 49 (c). Ss. 20 to 23 operation res- tricted (in Burma), Bur. Act 1 of 1910, s. 2. Amended, (tempy. in Assam), Assam Act 2 of 1922. Act 4 of 1922. (in Bengal) Ben. Act 4 of 1922. B.m. Act 6 of 1922. (in B. and O.) B. and O. Act 2 of 1922. (in Bombay) Bom. Act 1 of 1922. Bom. Act 3 of 1926. (See next page.)	282



UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1870	VII— <i>contd.</i>	The Court-fees Act, 1870 — <i>co t'd.</i>	Amended, (in C. Provs). C. P. Act 1 of 1923. (in Madras) Mad. Act 5 of 1922. (in Punj.) Punj. Act 1 of 1912. Punj. Act 3 of 1914. Punj. Act 7 of 1922. U. P. Act 3 of 1913. (in Lower Burma), Act 11 of 1889 ; Act 6 of 1900 ; (in Upper Bur- ma), Reg. 1 of 1896 ; Partially rep. by Reg. 5 of 1903 ;  Amended in the former Pro- vince of Bengal (except the Sambalpur District), Ben. Act 3 of 1898, s. 7.  Declared in force— in the Sonthal Parganas, Reg. 3 of 1872 as amended by Reg. 3 of 1899, s. 3 ; in the Angul sub-division, Reg. 3 of 1913, s. 3 ; in Upper Burma, (except the Shan States) Act 13 of 1898, s. 4 ; in British Baluchistan, Reg. 2 of 1913, s. 3. (with a modification). in the Chittagong Hill-tracts, by notification under s. 4 of Reg. 1 of 1900. (with modification).	
"	VIII	The Female Infanticide Prevention Act, 1870.	Short title given, Act 14 of 1897. Rep. in part and amended, Act 38 of 1920. Amended in Bombay Presi- dency, and declared to extend to that Presidency, Bom. Act 3 of 1897.	328

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1870	XX	The Court-fees Act (1870) Amendment Act, 1870.	Short title given, Act 14 of 1897. Declared in force in the Sonthál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3.	331
"	XXVII	The Indian Penal Code Amendment Act, 1870.	Short title given, Act 14 of 1897. Rep. in part, Act 10 of 1872 ; Act 1 of 1903. Rep. in part and amended, Act 12 of 1891 ; Act 4 of 1898. Virtually amended— Act 8 of 1882 ; Act 10 of 1886, ss. 21 (1) and 24 (1). Declared in force in the Sonthál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3.	332
1871	I	The Cattle-trespass Act, 1871.	Rep. in part, Act 10 of 1914. Amended, Act 1 of 1891, Act 17 of 1921. in Bom., Bom. Act 9 of 1924 ; in Bom., Bom. Act 4 of 1926.  Declared in force— in the Sonthál Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; in the Angul District, Reg. 3 of 1913, s. 3 ; in the Arakan Hill District, Reg. 1 of 1916, s. 2 ; in Upper Burma, (except the Shan States) Act 13 of 1898, s. 4 ; in British Baluchistan, Reg. 2 of 1913, s. 3 ; in the Pargana of Manpur, Reg. 2 of 1926, s. 2 ; in the Chittagong Hill-tracts, by notification under s. 4 (2) of Regulation I of 1900.	335

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1871	V	The Pri-cavers Act, 1871.	Rep. (except s. 15), Act 3 of 1900. Declared in force— in the Sonthal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; in the Angul District, Reg. 3 of 1913, s. 3 ; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; in British Baluchistan, Reg. 2 of 1913, s. 3.	347
"	XXIII	The Pensions Act, 1871	Rep. in part, Act 12 of 1891 ; Act 10 of 1914 ; Act 12 of 1927. Amended (locally), Act 21 of 1886. Virtually amended, United Province Act 3 of 1918. Rep. in part and amended, (in U. P.) U. P. Act 12 of 1922.  Declared in force— in the Sonthal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3. in Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; in British Baluchistan, Reg. 2 of 1913, s. 3.	347
"	XXXI	The Indian Weights and Measures of Capacity Act, 1871.	..	353
1872	I	The Indian Evidence Act, 1872.	Rep. in part, 44 and 45 Vict., c. 58, s. 127. Act 10 of 1897. Amended, Act 18 of 1872 ; Act 3 of 1887 ; Act 3 of 1891, ss. 1-8 ; Act 5 of 1899, Act 18 of 1919 ; Act 31 of 1926 ; Act 10 of 1927 ; Act 12 of 1927 ;  (See next page.)	357

**UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*contd.***

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1872	I— <i>contd.</i>	The Indian Evidence Act, 1872— <i>contd.</i>	S. 33 overridden, Act 14 of 1908, s. 13. S. 37 rep. in part and amended, Act 10 of 1914. Declared in force— in the Sonthāl Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3 ; in the Angul District, Reg. 3 of 1913, s. 3 ; in the Chittagong Hill-tracts, Reg. 1 of 1900, s. 4 ; in the Arakan Hill District, Reg. 1 of 1916, s. 2 ; in Kachin Hill-tracts as regards Hill-tribes, Reg. 1 of 1895, s. 3 ; in certain tracts in the Chin-Hills, Reg. 5 of 1896, s. 3 ; in Upper Burma, except the Shan States (with an addition), Act 13 of 1898, s. 4 ; in British Baluchistan (with a modification), Reg. 2 of 1913, s. 3 ; in the Pargana of Manpur, Reg. 2 of 1926, s. 2.	
"	III	The Special Marriage Act, 1872.	Short title given, Act 14 of 1897. Rep. in part, Act 16 of 1874 ; Act 12 of 1876. Amended, Act 6 of 1886. Act 38 of 1920. Act 30 of 1923. Declared in force— in the Sonthāl Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 2 ; in the Angul district, Reg. 3 of 1913, s. 3, in British Baluchistan, Reg. 2 of 1912, s. 3.	418
"	IX	The Indian Contract Act, 1872.	Rep. in part, Act 1 of 1877. Rep. in part and amended, Act 6 of 1899 ; Act 24 of 1917. Amended, Act 4 of 1886 ; Act 12 of 1891. S. 1 rep. in part and Schedule rep. Act 10 of 1914. S. 63. amended. (in C. Provs.) C. P. Act 1 of 1915.  (See next page.)	427

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN  
COUNCIL—*concl'd.*

1	2	3	4	5
Year.	No.	Short title or subject.	How repealed or otherwise affected by legislation.	Page.
1872	IX— <i>cont'd.</i>	The Indian Contract Act, 1872— <i>cont'd.</i>	Declared in force— in the Sonthal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3; in the Arakan Hill District, Reg. 1 of 1916, s. 2; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4; in British Baluchistan, Reg. 2 of 1913, s. 3; in the Pargana of Manpur, Reg. 2 of 1926, s. 2.	
"	XV	The Indian Christian Marriage Act, 1872.	Rep. in part, Act 16 of 1874. Rep. in part and amended, Act 12 of 1891. Amended, Act 6 of 1886; Act 2 of 1891; Act 1 of 1903; Act 13 of 1911; Act 38 of 1920. Declared in force— in the Sonthal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3; in the Arakan Hill District, Reg. 1 of 1916, s. 2; in Upper Burma (except the Shan States), Act 13 of 1898, s. 4; in British Baluchistan, Reg. 2 of 1913, s. 3; in the Chittagong Hill-tracts by notification under s. 4 of Reg. 1 of 1900.	507
"	XVIII	The Indian Evidence Act Amendment Act.	Rep. in part, Act 10 of 1873; Act 16 of 1874; Act 12 of 1876. S. 4 virtually amended, Act 5 of 1899, s. 3 ( <i>I</i> ). Declared in force in the Sonthal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3.	543
"	XIX	The Indian Penal Code Amendment Act, 1872.	Short title given, Act 14 of 1897. Declared in force in the Sonthal Parganas, Reg. 3 of 1872 as amended by Reg. 3 of 1899, s. 3.	544



THE

# UNREPEALED GENERAL ACTS

OF

## THE GOVERNOR GENERAL IN COUNCIL.

ACT No. II OF 1834.<sup>1</sup>

[20th November, 1834.]

Be it enacted that each of the Secretaries to the Government of India shall be competent to perform all the duties and to exercise all the powers which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretary to the Government of Fort William in Bengal; and that each of the Secretaries to the Governments of Fort St. George and Bombay respectively shall be competent to perform all the duties, and to exercise all the powers which, by any Act of Parliament, or any Regulation now in force are assigned to the Chief Secretaries to the Governments of Fort St. George and Bombay, respectively.

Secretaries to Government to exercise powers of Chief Secretaries.

<sup>1</sup> Short title, "The Secretaries to Government Act, 1834". See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—the Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44) and Máubhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. See Gazette of India, 1881, Pt. I, p. 504.

<sup>2</sup> The words "and to the Government of Fort William in Bengal" were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

<sup>3</sup> See the East India Company Act, 1793 (33 Geo. 3, c. 52), s. 39, and the East India Company Act, 1813 (53 Geo. 3, c. 155), s. 79. These Acts have since been repealed by the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61).

ACT No. IV OF 1837.<sup>1</sup>

[17th April, 1837.]

All subjects  
of Crown  
empowered  
to hold land.

1. \* \* \* \* \* It shall be lawful for any subject of His Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories of the East India Company.<sup>2</sup>

<sup>1</sup> Short title, "The Property in Land Act, 1837." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act appears to have been passed pursuant to the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), s. 86. This Act has, with the exception of s. 112, since been repealed by the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61).

It has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, see Genl. Acts, Vol. II.]

It has also been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s. 3 and schedule, as amended by the Sonthál Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B. & O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672.

West Jalpaiguri . . . . . Ditto 1881, Pt. I, p. 74.

The District of Hazaribagh . . . . . Ditto 1881, Pt. I, p. 507.

The District of Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44) . . . . . Ditto 1881, Pt. I, p. 508.

The District of Mámbhum . . . . . Ditto 1881, Pt. I, p. 509.

Pargana Dhálbhum in the District of Singhbhum . . . . . Ditto 1881, Pt. I, p. 510.

The Scheduled portion of the Mirzápur District . . . . . Ditto 1879, Pt. I, p. 383.

Jaunsar Báwar . . . . . Ditto 1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code) . . . . . Ditto 1886, Pt. I, p. 48.

The District of Lahaul . . . . . Ditto 1886, Pt. I, p. 301.

The District of Sylhet . . . . . Ditto 1879, Pt. I, p. 631.

The Scheduled Districts in Ganjam and Vizagapatam . . . . . Ditto 1898, Pt. I, p. 869, and Fort St. George Gazette, 1898, Pt. I, p. 666.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. See Gazette of India, 1876, Pt. I, p. 606.

<sup>2</sup> The words "It is hereby enacted that, after the 1st day of May next" were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>3</sup> For the old law, see the Bengal Land-Revenue Regulation, 1793 (2 of 1793), ss. 17 and 46, repealed by the Repealing Act, 1868 (8 of 1868), s. 1, and the Repealing Act, 1874 (16 of 1874), s. 1, respectively.



2. 1 \* \* \* \* \* All rules which prescribe the manner in which such property as is aforesaid may now be acquired and held by Natives of the said territories<sup>2</sup> shall extend to all persons who shall, under the authority of this Act, acquire or hold such property.<sup>3</sup>

Rules applied  
to holding  
under Act.

# ACT No. XXIX OF 1839.<sup>4</sup>

[16th December, 1839.]

## An Act for the Amendment of the Law relating to Dower.

### 1. Whereas it is expedient to extend the amendments in the English Preamble,

<sup>1</sup> The words " And it is hereby enacted that " were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> For definitions of the term " Natives of India," see the Army Act (44 & 45 Vict., c. 58), s. 190 (22).

<sup>3</sup> See also the Landholders' Public Charges and Duties Act, 1853 (2 of 1853), *infra*, p. 61.

<sup>4</sup> Short title, " The Dower Act, 1839." See the Indian Short Titles Act, 1897 (14 of 1897).

The whole Act, except as to marriages contracted before 1st January, 1866, was repealed by the Repealing Act, 1868 (8 of 1868).

As to dower when the marriage was contracted before the 1st January, 1866, the Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, see Genl. Acts, Vol. II.]

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

West Jalpáiguri . . . . . See Gazetto of India, 1881, Pt. I, p. 74.

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . . Ditto 1881, Pt. I, p. 504.

The Scheduled portion of the Mirzápur District . . . Ditto 1879, Pt. I, p. 383.

Jaunsar Bawar . . . Ditto 1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900), s. 3, Punjab and N.-W. Code*) . . . Ditto 1886, Pt. I, p. 48.

law of dower contained in the <sup>1</sup>Statute 3rd and 4th William IV, Chapter 3 & 4 Will CV, to the territories of the East India Company in cases which, but for <sup>4, c. 105.</sup> the passing of this Act, would be governed by the English law of dower as it existed previously to the passing of the aforesaid Statute;

**Interpretation.**

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof;

2 \* \* \* \* \*

**Widows to be entitled to dower out of equitable estates.**

2. <sup>3</sup> \* \* \* \* \* When a husband shall die, beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint-tenancy), then his widow shall be entitled in equity to dower out of the same land.

**Seisin shall not be necessary to give title to dower.**

3. <sup>3</sup> \* \* \* \* \* When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof: Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

**No dower out of estates disposed of.**

4. <sup>3</sup> \* \* \* \* \* No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will.

**Priority to partial estates, charges and specialty debts.**

5. <sup>3</sup> \* \* \* \* \* All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

The District of Sylhet . . . See Gazette of India, 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushai Hills) . . .

Ditto 1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam . . .

Ditto 1898, Pt. I, p. 870, and

Port St. George Gazette, 1898, Pt. I, p. 666.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. See Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India, 1886, Pt. I, p. 301.

<sup>1</sup> Short title, "The Dower Act, 1833." See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

<sup>2</sup> The last sentence in this section was repealed by Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

<sup>3</sup> The words "And it is hereby further enacted, that" in ss. 2 to 5 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

6. <sup>1</sup> \* \* \* A widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land. Dower may be barred by a declaration in a deed,

7. <sup>1</sup> \* \* \* A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his land. or by a declaration in the husband's will.

8. <sup>1</sup> \* \* \* The right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid. Dower shall be subject to restrictions.

9. <sup>1</sup> \* \* \* Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will. Devise of real estate to the widow shall bar her dower.

10. <sup>1</sup> \* \* \* No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his will: Bequest of personal estate to the widow shall not bar her dower.

11. Provided always <sup>2</sup> \* \* \* that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them. Agreement not to bar dower may be enforced.

12. <sup>1</sup> \* \* \* Nothing in this Act contained shall interfere with any rule of equity or of any Ecclesiastical Court by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies. Legacies in bar of dower still entitled to preference.

13. [*Certain dowers abolished.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

14. <sup>1</sup> \* \* \* This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement or charge executed, entered into or created before the said first day of July one thousand eight hundred and forty the effect of defeating or prejudicing any right to dower. Act not to take effect before the 1st July 1840.

15. <sup>3</sup> \* \* \* This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in Saving of certain rights.

<sup>1</sup> The words "And it is hereby further enacted, that" in ss. 6 to 10 and 12 and 14 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

<sup>2</sup> The words "And it is hereby further enacted" were repealed by *ibid.*

<sup>3</sup> The words "And it is hereby provided that" were repealed by *ibid.*

and jurisdiction. cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

ACT No. XXXII OF 1839<sup>1</sup>.

[30th December, 1839.]

An Act concerning the allowance of Interest in certain cases.

Preamble.

WHEREAS it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her

<sup>1</sup> Short title, "The Interest Act, 1839." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. , to be in force in the following Scheduled Districts, namely:—

Sindh	See Gazette of India, 1880, Pt. I, p. 672.	
West Jalpaiguri, the Western Dvārs, namely, that portion of the Jalpaiguri Division known as the Western Dvārs, that is, the country lying between the Tistā and Sunkos Rivers in the Jalpaiguri District, the Western Hills of Dārjiling (that is, the Hills west of the Tistā River in the District of Dārjiling), the Dārjiling Tarāi and the Damson Sub-division of the District of Dārjiling . . .	Ditto	1881, Pt. I, p. 74.
The District of Hazāribāgh . . .	Ditto	1881, Pt. I, p. 507.
The District of Lohārdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44) . . .	Ditto	1881, Pt. I, p. 508.
The District of Mānbhum . . .	Ditto	1881, Pt. I, p. 509.
The Pargana of Dhālbum in the District of Singbhum . . .	Ditto	1881, Pt. I, p. 510.
The Scheduled portion of the Mirzāpur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Bāwar . . .	Ditto	1879, Pt. I, p. 382.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Districts of Hazāra, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshāwar and Kohāt now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and <i>ibid</i> , 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazāra District known as Upper Tanawal by the Hazāra (Upper Tanawal).		

3 & 4 Will.  
4, cap. 42.

Majesty's Courts as elsewhere, the provisions of the <sup>1</sup>Statute 3rd and 4th William IV, chapter 42, section 28, concerning the allowance of interest in certain cases;

1. It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided that interest shall be payable in all cases in which it is now payable by law.

Power of  
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### ACT X OF 1841.

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The District of Sylhet	Ditto 1879, Pt. I, p. 631.
The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Dvárs in the Goálpára District	Ditto 1897, Pt. I, p. 299.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto 1898, Pt. I, p. 870, and Fort St. George Gazette, 1898, Pt. I, p. 666.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumáon and Garhwál . . . See Gazette of India, 1876, Pt. I, p. 606.

The Taráí of the Province of Agra . . . Ditto 1876, Pt. I, p. 505.

<sup>1</sup> Short title, "The Civil Procedure Act, 1833." See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

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PROCLAMATION.

THE SCHEDULE.

ACT No. X OF 1841.<sup>1</sup>

[5th July, 1841.]

An Act for prescribing the Rules to be observed in order that ships or vessels belonging to ports within the territories under the Government of the East India Company, or belonging to Native Princes or States or their subjects, may become entitled to the privileges of British ships under a Proclamation of the Governor General of India in Council made in pursuance of the <sup>2</sup>Statute 3rd and 4th Victoria, Ch. 56.

3 & 4 Vict.,  
cap. 56.

1. WHEREAS by a Statute passed in the third and fourth years of Her Majesty Queen Victoria,<sup>2</sup> entitled “An Act to regulate the trade of ships built and trading within the limits of the East India Company’s Charter,” it is enacted “that it shall be lawful for the Governor General of India in Council, by <sup>3</sup>proclamation, to declare that all ships or vessels built or to be built within the limits of the Charter of the East India Company, being owned by Her Majesty’s subjects for whom the said Governor General in Council has power to legislate, and belonging, under the Regulations hereinafter provided for, to any ports in the territories under the government of the said Company, shall be deemed to be British ships for all the purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof: Provided that upon such declaration being made the said Governor General in Council shall, and the said Governor General in Council is hereby accordingly empowered to, make Regulations, to be enforced by suitable penalties, concerning the registering, licensing and ascertaining the admeasurement of the tonnage and burden, and generally for the trading within the limits aforesaid of such ships or vessels;

And whereas it is further enacted in the same Statute as follows, that is to say: “And whereas it may be expedient to admit to similar privileges and advantages any ships or vessels belonging to Native Princes or States in subordinate alliance with, or having subsidiary treaties with, the East India Company, or owned by subjects of any

<sup>1</sup> Short title, “The Indian Registration of Ships Act, 1841”—see the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in Sind (Gazette of India, 1880, Pt. I, p. 672), Aden (*ib.*, 1879, Pt. I, p. 434) and the District of Sylhet (*ib.*, 1879, Pt. I, p. 681).

Act 11 of 1850 is to be construed with, and taken as part of, Act 10 of 1841—see Act 11 of 1850, s. 5, *infra*, p. 36.

<sup>2</sup> This Act has been repealed “as to all Her Majesty’s dominions” by the Statute Law Revision Act (No. 2) of 1890 (53 & 54 Vict., c. 51), Sch., Pt. I.

<sup>3</sup> *Infra*, p. 22.

such Princes or States, be it therefore enacted that the Governor General of India in Council may by such Regulations as aforesaid, such Regulations being subject as aforesaid, admit to the privileges and advantages of British ships for the purposes of trade within the limits of the Charter of the said Company, including the Cape of Good Hope, and the territories and dependencies thereof, or to any of such privileges and advantages, any ships or vessels belonging to such Princes or States, or any of them, or owned by subjects of any such Princes or States; but any such Regulations shall provide for the granting to such ships or vessels fit and convenient licenses or passes, and generally for the trading within the limits aforesaid of such ships or vessels ”;

And whereas in pursuance of such enactments it is expedient to frame such Regulations as are mentioned therein, the compliance with which shall be required in order that ships or vessels may be deemed British ships, or be admitted to the privileges and advantages of British ships under such Proclamation as aforesaid;

**Ships to be  
registered.**

It is hereby enacted that no ship or vessel shall be deemed a British ship under such Proclamation as aforesaid (except as regards ships or vessels registered before the passing of this Act, or having a pass at the time of passing thereof) unless the person or persons claiming property therein shall have caused the same to have been registered at some one of the ports hereinafter mentioned within the territories of the East India Company, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry and grant such certificate as hereinafter directed, the form of which certificate shall be as follows :—

**Certificate of  
registry.**

“ This is to certify that in pursuance of the Act No. X of 1841 of the Governor General of India in Council (here insert the names and occupation and residence of subscribing owners) having made and subscribed the declaration required by the said Act and having declared that (he or they) together with (names, occupations and residence of non-subscribing owners) (is or are) sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the (ship’s name) of (place at which the vessel shall be registered) which is of the burthen of (number of tons), and whereof (master’s name) is master, and that the said ship or vessel was (when and where built) and (name and employment of Surveying-officer), having certified to us, that the said ship or vessel has (number) decks and (number) masts, that her (here insert measurement as ascertained by the rules hereinafter mentioned), that she is (how rigged) rigged with a (standing or running) bowsprit, is (description of stern) sterned, (carvel or clincher) built, has (whether any or no)



gallery, and (kind of head, if any) head: and the said subscribing owners having consented and agreed to the above description, the said ship or vessel called the (name) has been duly registered at the port of (name of port). Certified under our hands at the custom-house, in the said port of (name of port), this (date) day of (name of month) in the year (words at length).

(Signed)———, *Collector or Registrar of Shipping.*”

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following:—

Names of several owners within mentioned.					Number of shares held by each owner.
Name	.	.	.	.	Thirty-two.
Name	.	.	.	.	Sixteen.
Name	.	.	.	.	Eight.

etc., etc.

(Signed)———, *Collector.*

2. <sup>1</sup> \* \* \* \* \* The ports at which registration shall be made shall be the ports of Calcutta, Madras, Bombay <sup>2</sup>\* and such other places subordinate to the Local Governments of India as such Governments respectively may, from time to time, <sup>3</sup>declare to be registering ports under this Act: Ports of registry.

Provided that ships or vessels built at any place other than any of such ports shall be allowed to make their first voyage to any of such ports, being the ports at which it is intended they shall be registered under a certificate to be granted by the principal British officer at the place where the ship is built, or if there be no British officer in authority there, then by three merchants of such place, which certificate shall contain all the particulars with regard to the ownership and description of the ships or vessels contained in a certificate of registry, and shall specify the ports at which it is intended that they shall respectively be

<sup>1</sup> The words “ And it is hereby enacted, that ” were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The word “ Singapore ” was repealed by s. 1 of the Indian Registration of Ships Act, 1891 (7 of 1891).

<sup>3</sup> For Ports declared to be Ports of Registry by Local Governments, see different local rules and orders.

registered, and which certificate shall have all the effect of a certificate of registry under this Act, during the first voyage from the place of building to the ports at which the ships or vessels respectively shall be afterwards registered :

Provided that such ships or vessels so proceeding on their first voyage as aforesaid shall be deemed British ships only whilst duly prosecuting such first voyage for the purpose of registry, and, if they be not registered within a reasonable time after their arrival at the port of registry, the owner or owners, or master or other person having or taking the command or charge of such ship or vessel, shall be liable, <sup>1</sup>[on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding five thousand rupees.

Registrar.

3. <sup>2</sup> \* \* \* \* The persons authorized to make such registry, and to grant such certificates as aforesaid, shall be <sup>3</sup>[such persons] as the Local Governments may, from time to time, 'appoint for the ports under their respective Presidencies.

Book of  
registry.

4. <sup>2</sup> \* \* \* \* At every port where registry shall be made in pursuance of this Act a book shall be kept by the registering-officer, in which all the particulars contained in the form of the certificate of the registry hereinbefore directed to be used shall be duly entered; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year. And such registering-officer shall forthwith, or within one month at the furthest, send to the Government of the Presidency to which he is subordinate a true and exact copy, together with the number of every certificate which shall be by him so granted.

Declaration.

5. <sup>2</sup> \* \* \* \* No registry shall henceforth be made or certificate be granted, until the following declaration be made or subscribed before the registering-officer by the owner or major part of the owners of the ship or vessel required to be registered:—

“ I, A. B., of (place of residence and occupation) do truly declare that the ship or vessel (name) of (port or place) whereof (master's name) is at present master, being (kind of build, burthen, et cetera, as described in the certificate of the surveying-officer) was (when and where) built, and that I, the said (A. B.), and the other owners (names and occupations, if any, and where they respectively reside), am (or

<sup>1</sup> These words were substituted for the original words by s. 38 of the Indian Merchant Shipping Act, 1833 (5 of 1833).

<sup>2</sup> The words “ And it is hereby enacted, that ” in ss. 3, 4 and 5 were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>3</sup> These words were substituted for the original words and figures “ the persons now authorized to make registry of ships or vessels under the Statute 3 and 4 W. 4, Ch. 55, and such other or different persons ” by s. 2 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>4</sup> For persons appointed under this section, *see* different local rules and orders.

are) sole owner (or owners) of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share or property therein or thereto; and that I, the said (A. B.), and the said other owners (if any), am (or are) truly and *bonâ fide* a subject (or subjects) of Her Majesty for whom the Governor General of India in Council has power to legislate, and that no person not being subject as aforesaid, directly or indirectly, hath any share or part interest in the said ship or vessel:"

Provided that, if the registering-officer shall see occasion to doubt the truth of any of the facts contained in the above declaration, he shall not deem such declaration to be conclusive, but may refuse the registry or certificate, and his discretion exercised in this behalf shall be subject only to an appeal to the Local Government to which he is subordinate.

6. <sup>1</sup> \* \* \* \* \* In case the required number of joint owners of any ship or vessel shall not personally attend to make and subscribe the declaration hereinbefore directed to be made and subscribed, then and in such case such owner or owners as shall personally attend and make and subscribe the declarations aforesaid shall further declare that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not to the best of his or their knowledge or belief wilfully absented himself or themselves in order to avoid the making the declaration hereinbefore directed to be made and subscribed, or is or are prevented by illness from attending to make and subscribe the said declaration. Further declaration by owners who attend.

7. And in order to enable the registering-officer to grant a certificate truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of Customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted, it is hereby enacted that— Measurement to be made.

previous to the registering or granting of any certificate of registry as aforesaid some one or more person or persons appointed<sup>2</sup> by the Local Governments respectively, taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons, skilled in the building and admeasurement of ships, shall go on board of every such ship or vessel that is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate hereinbefore directed in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the

<sup>1</sup> The words "And it is hereby enacted, that" in s. 6 were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> See footnote 4 on p. 12, *ante*.

owner or owners, or in his or their absence by the said master, and shall deliver a true and just account in writing of all such particulars of the build, description and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited to the officer authorized to make such registry and grant such certificate of registry as aforesaid; and the said master or other person attending on the part of the owner or owners is hereby required to sign his name also to the certificate of such surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

Certificate of  
surveying  
officer.

<sup>1</sup>[8. The certificate of the surveying-officer shall be in the form in the schedule to this Act or in such <sup>2</sup>other form as the Governor General in Council may from time to time prescribe; and such certificate shall be delivered to the registering-officer before registry.]

Measurement  
of tonnage  
for purpose  
of registry.

<sup>1</sup>[9. Subject to the provisions of section 70 of <sup>3</sup>Act I of 1859 (*An Act for the amendment of the law relating to Merchant Seamen*) as amended by section 9 of the <sup>4</sup>Indian Merchant Seamen's Act, 1876, the tonnage of a ship or vessel required by law to be registered shall, previous to her being registered, be measured and ascertained according to such of the rules and orders for the time being in force in and under the <sup>5</sup>Merchant Shipping Act, 1854, as amended by subsequent Acts including the Merchant Shipping (Tonnage) Act, 1889, as apply to measurement of tonnage for the purpose of registry.]

XIII of  
1876.

17 & 18 Vic  
c. 104.  
52 & 53 Vic  
c. 43.

Measurement  
of tonnage  
for purpose  
other than  
registry.

<sup>1</sup>[10. Subject to the provisions referred to in the last foregoing section, the tonnage of a ship or vessel requiring to be measured for any purpose other than registry shall be measured and ascertained according to such of the rules and orders for the time being in force in and under the <sup>5</sup>Merchant Shipping Act, 1854, amended as aforesaid, as apply to measurement of tonnage for a purpose other than registry.]

17 & 18 Vic  
c. 104.

Substitution  
of Governor  
General in  
Council for  
Board of  
Trade.

<sup>1</sup>[11. The rules and orders referred to in section 9 and section 10 of this Act shall, in their application to measurement of tonnage for the purposes of this Act, or of any enactment, rule or order referring to this Act, be read and construed as if the Governor General in Council were therein named instead of the Board of Trade or the authority for

<sup>1</sup> Sections 8 to 12 were substituted for the original ss. 8 to 12 by s. 3 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>2</sup> For form prescribed by the Governor General in Council instead of that in the Schedule to the Act, see Genl. Stat. R. & O.

<sup>3</sup> See now, the Indian Merchant Shipping Act, 1923 (21 of 1923), by which this Act was repealed.

<sup>4</sup> See now, the Indian Merchant Shipping Act, 1923 (21 of 1923), by which this Act was repealed.

<sup>5</sup> See now, the Merchant Shipping Act, 1894, Coll. Stats. Ind., by which these Acts have been repealed and their provisions re-enacted.

which the Board of Trade has been substituted by section 3 of the 35 & 36 Vict.,<sup>1</sup> Merchant Shipping Act, 1872.]  
c. 73.

<sup>2</sup>[12. The true amount of the register tonnage of every ship or vessel to be measured and ascertained according to the rules and orders referred to in section 9 of this Act shall be deeply carved or cut in figures of at least three inches in length on the main beam of every such ship or vessel prior to her being registered.] Marking of register tonnage on ship or vessel.

13. [*Registration of country craft not exceeding two hundred tons.*] *Rep. by Act XI of 1850.*

14. <sup>3</sup> \* \* \* Whenever the <sup>4</sup>[register] tonnage of any ship or vessel shall have been ascertained according to the <sup>5</sup>[said rules and orders], such account of <sup>4</sup>[register] tonnage shall ever after be deemed the <sup>4</sup>[register] tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form of burthen of such ship or vessel, or it shall be discovered that the <sup>4</sup>[register] tonnage of such ship or vessel had been erroneously taken and computed. Registered tonnage to be repealed in every subsequent register.

15. <sup>3</sup> \* \* \* If such certificate as aforesaid shall be sold, lent or otherwise disposed of to any person or persons whatever than those for whose use it is granted, or shall be made use of for the service of any other ship or vessel than the ship or vessel for which it is granted, such certificate shall thenceforth be utterly void, and the master or any owner of the ship or vessel who shall be proved to have sold, lent or disposed of such certificate, or made use of the same as aforesaid, or shall have concurred in or been privy to the committing of any such offence, shall be liable, <sup>6</sup> \* \* <sup>7</sup>[on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding ten thousand rupees. Fraudulent use of certificate.

And in case such ship or vessel shall be lost or taken by the enemy, burnt or broken up, or otherwise prevented from returning to the port at which she is registered, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the

<sup>1</sup> See the fifth foot-note on p. 14, *ante*.

<sup>2</sup> See the first foot-note on p. 14, *ante*.

<sup>3</sup> The words "And it is hereby enacted, that" in ss. 14 and 15 were repealed by the Repealing and Amending Act, 1874 (16 of 1874).

<sup>4</sup> This word was prefixed to the word "tonnage" by s. 4 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>5</sup> These words were substituted for the words "rules herein prescribed" by *ibid*.

<sup>6</sup> The words "upon conviction" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

<sup>7</sup> These words were substituted for the words "on information as aforesaid" by the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 38.

Crown, <sup>1</sup> \* \* \* \* or shall under any circumstances have been registered *de novo*, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in the territories of the East India Company, to the registering-officer at such port, in default whereof the master or any of the owners shall be liable, <sup>2</sup>[on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding five thousand rupees.

• And if any person not being such subject as aforesaid shall purchase or otherwise become entitled to the whole or to any part or share of or any interest in such ship or vessel, and the same shall be within the limits of any port of the territories of the East India Company, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the registering-officer at such port, and if such ship or vessel shall be in any place not within the territories of the East India Company when such purchase or transfer of property shall take place, then the certificate shall be delivered up within fourteen days after the arrival of such ship or vessel or of the master thereof in any port of the territories of the East India Company to the registering-officer at such port, in default whereof the master or any of the owners shall be liable on conviction before any Justice of the Peace in a penalty not exceeding five thousand rupees recoverable in manner provided by <sup>3</sup>[the law for the time being in force for the recovery of fines imposed by Criminal Courts].

Change of  
master.

16. 4\* \* \* When and so often as the master of any ship or vessel registered in manner hereinbefore directed shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorized to make such registry and grant such certificates of registry at the port where such change shall take place, if it be a port within the territories of the East India Company, the certificate of registry belonging to such ship or vessel, who shall thereupon endorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act, who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof in like manner as of the original entry. But if the change do not take place in any port within the territories

<sup>1</sup> The words "or the East India Company" were repealed by s. 5 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>2</sup> See seventh foot-note on p. 15, *ante*.

<sup>3</sup> These words were substituted for the words and figures "Act No. 2 of 1839" by s. 5 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>4</sup> The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

of the East India Company, then such delivery, memorandum and endorsement shall be made and notice given at the first port within the territories of the East India Company at which the new master shall arrive after such change. In default of which delivery of the certificate such new master or any of the owners shall be liable, on conviction before a Justice of the Peace, to a penalty not exceeding five thousand rupees recoverable as aforesaid.

17. <sup>1</sup> \* \* \* It shall not be lawful for any owner or owners of <sup>Name of</sup> any ship or vessel to give any name to such ship or vessel other than that <sup>ship.</sup> by which she was first registered in pursuance of this Act, and <sup>2</sup> \* the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel, after such registry, shall begin to take in any cargo, paint or cause to be painted, in white or yellow letters of a length of not less than four inches upon a black ground on some conspicuous part of the stern, the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same.

And <sup>2</sup> \* if such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate or in any wise hide or conceal, or cause or procure or permit the same to be done, or shall in any written or printed paper or other document describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe or cause or procure or permit such ship or vessel to be described by any other name to any officer or officers of Revenue in the due execution of his or their duty, then and in every such case the certificate of registry shall thenceforth become utterly void, and such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall be liable, <sup>3</sup>[on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding ten thousand rupees <sup>4</sup>[recoverable as aforesaid].

18. <sup>1</sup> \* \* \* All and every person and persons who shall <sup>Certificate of</sup> apply for a certificate of the registry of any ship or vessel shall, and <sup>building.</sup> they are hereby required to, produce to the person or persons authorized

<sup>1</sup> The words "And it is hereby enacted, that" in ss. 17 and 18 were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The word "that" was repealed by s. 6 (1) of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>3</sup> These words were substituted for the words "on information as aforesaid" by s. 38 of the Indian Merchant Shipping Act, 1883 (5 of 1883).

<sup>4</sup> These words added by s. 6 (2) of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

to grant such certificate a true and full particular under the hand of the builder of such ship or vessel, or in case the want of such certificate can be satisfactorily accounted for, then to produce other sufficient evidence of the proper denomination, and of the time when, and the place where, such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, and shall also make and subscribe a declaration before the person or persons hereinbefore authorized to grant such certificate that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid.

Certificate  
lost or mis-  
laid.

19. <sup>1</sup> \* \* \* \* If the certificate of registry of any ship or vessel shall be lost or mislaid, so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the Registering-officer of the port at which the ship is registered, such officer shall and may, where the certificate shall have been lost or mislaid, permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted:

Provided always that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such Registering-officer shall and may grant a license for the present use of such ship or vessel, which license shall for the time and to the extent specified therein, and no longer, be of the same force and virtue as a certificate of registry granted under this Act:

Provided always that, if the certificate of registry shall at any time afterwards be found, the same shall be forthwith delivered to the proper Officers of Customs to be cancelled, and that no illegal use be made of the same, in default whereof the original certificate and the renewed certificate and license shall thenceforth become utterly void, and any person wilfully detaining the certificate so required to be cancelled, or making any illegal use thereof, shall be liable on conviction before any Justice in a penalty not exceeding five thousand rupees recoverable as aforesaid.

Detention of  
certificate.

20. And whereas it is not proper that any person under any pretence whatever should detain the certificate of registry of any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted, it is therefore hereby enacted that—

in case any person who shall have received or obtained by any means or for any purpose whatever the certificate of the registry of any such ship or vessel (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel, or not,) shall wilfully detain and refuse to deliver up the same to the proper Officers

<sup>1</sup> The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).



of Customs, for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual command, possession and management of such ship or vessel as the ostensible and reputed master, or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal to any Justice of the Peace residing near to the place where such detainer and refusal shall be;

and on such complaint the said Justice shall and is hereby required, by warrant under his hand seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal;

and if it shall appear to the said Justice on examination of such person or otherwise that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be subject on conviction before such Justice to a penalty not exceeding one thousand rupees, recoverable as aforesaid, and the said Justice shall, and he is hereby required to, certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall on the terms and conditions of law being complied with make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*;

and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded so that the said warrant of the Justice cannot be executed upon him, and proof thereof shall be made to the satisfaction of the Registering-officer of the port at which the ship or vessel was registered, it shall be lawful for the said officer to permit such ship or vessel to be registered *de novo*, or otherwise, in his discretion, to grant a license for the present use of such ship or vessel in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid.

21. <sup>1</sup> \* \* \* \* \* If any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall in any manner whatever be altered so as not to correspond with all the particulars contained in the certificate of her registry, or if any alteration shall take place in the ownership of any ship or vessel, or of any share or shares thereof, in such cases such ship or vessel shall be registered *de novo* in manner hereinbefore required as soon as she returns to the port to which she belongs, or to any other port within the territories of the East India Company, on failure whereof such ship or vessel shall

Registration  
*de novo*.<sup>1</sup>

<sup>1</sup> The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1974 (16 of 1874).

be deemed to be a ship or vessel not duly registered, and any person making use of a certificate for the purposes of any ship or vessel which has been granted in respect of the same, after the same ought to have been registered *de novo*, shall be liable on conviction before any Justice to a penalty not exceeding five thousand rupees recoverable as aforesaid.

Testimony  
of Register-  
ing-officers.

22. And whereas great inconvenience may arise from the Registering-officers being served with subpoenas requiring them to bring with them and produce, on trials in Courts of Law relative to the ownership of vessels or otherwise, the declarations required to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom; and whereas it would tend much to the despatch of business if the attendance of such Registering-officers with the same upon such trials were dispensed with, it is therefore hereby enacted that—

the Registering-officer at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever, produce and exhibit for his, her or their inspection and examination any declaration made by any such owner or owners, and also any register or entry in any book or books of registry required, and shall, upon every reasonable request by any person or persons whomsoever, permit him, her or them to take a copy or copies, or an extract or extracts thereof respectively, and that the copy and copies of any such oath or declaration, registry or entry shall, upon being proved to be true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any Registering-officer, or other person or persons acting for them respectively, in all cases, as fully and to all intents and purposes as such original or originals, if produced by any Registering-officer, or other person or persons acting for them, could or might legally be admitted or received in evidence.

False declaration.

Falsifying  
documents.

23. <sup>1</sup> \* \* \* \* If any person or persons shall falsely make declaration to any of the matters hereinbefore required to be verified by declaration, or if any person or persons shall counterfeit, erase, alter or falsify any certificate or other instrument in writing required or directed to be obtained, granted or produced by this Act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, falsified, or shall wilfully grant such certificate or other instrument in writing, knowing it to be false, such person or persons shall for every such offence be liable, <sup>2</sup> \* \* <sup>3</sup> [on conviction before

<sup>1</sup> The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The words "on conviction" were repealed by the Repealing and Amending Act, 1911 (10 of 1914).

<sup>3</sup> These words were substituted for the words, "on conviction upon information as aforesaid" by s. 33 of the Indian Merchant Shipping Act, 1883 (5 of 1883).

a Presidency Magistrate or a Magistrate of the first class], to a penalty not exceeding ten thousand rupees <sup>1</sup>[recoverable as aforesaid], and, if any such offence be committed by the owner of any ship or vessel, the certificate of such ship or vessel shall thenceforth be wholly void.

24. <sup>2</sup> \* \* \* \* \* When any ship or vessel duly registered <sup>Ships of Native States.</sup> under this Act, or sailing under the British Navigation Law, shall come to be owned by a Native Prince or State, or by any subject of such Native Prince or State as aforesaid, it shall be lawful <sup>3</sup>[for a Local Government] to continue to such ship or vessel the privileges and advantages of a British ship for the purposes aforesaid by a pass to be <sup>4</sup> \* \* \* \* \* subscribed by a Secretary to Government, stating the voyage, or voyages for which the same is to have effect, and the period for which it is to last; and it shall be lawful <sup>5</sup>[for a Local Government] to issue a similar pass conferring the privileges and advantages of a British ship for the purposes aforesaid under this Act to any ship or vessel<sup>5</sup> built within the dominions of such Native Prince or State, and owned by such Prince or State or by any of their subjects: Provided always that the ships belonging to Native Princes or States or their subjects in respect of which passes may be granted under this Act shall, during the voyage or voyages, or the period for which any such pass shall be granted, be commanded by a subject of Her Majesty for whom the Governor General in Council has power to legislate.

25. <sup>2</sup> \* \* \* \* \* The fees demandable in respect of the granting <sup>Fees.</sup> any certificate or pass under this Act shall be fixed from time to time according to the directions of the Governor General in Council, but so that the same shall not exceed the amount of fees now payable for registering or granting passes to ships or vessels at the different Presidencies.

26. <sup>6</sup> \* \* \* \* \* All ships or vessels registered under this Act shall be deemed to belong to the ports at which they shall be respectively registered. And all ships or vessels being registered or in respect of which passes may have been granted which are unexpired at the time of passing this Act shall for the purpose of being deemed British ships <sup>Ports to which ships belong.</sup>

<sup>1</sup> These words were inserted by s. 7 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>2</sup> The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>3</sup> These words were substituted for the words "for the Governor of Fort William in Bengal, or for the Governor in Council of any Presidency," by s. 8 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>4</sup> The words "issued under the Company's seal and" were repealed by *ibid.*

<sup>5</sup> See also the Indian Registration of Ships Act (1841) Amendment Act, 1850 (11 of 1850), ss. 2 and 3, *infra*.

<sup>6</sup> The words "And it is hereby declared and enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

be deemed to belong to the ports at which they may have been registered, or when passes shall have been granted which are unexpired, at which such passes may have been respectively granted. And such ships or vessels built and owned as required by the <sup>1</sup> Statute 3 & 4 Vict., Ch. 56, shall continue subject to all the rules in force at the respective Presidencies before the passing of this Act, touching the registering, measurement, granting passes or other requisitions in respect of the same, and shall not be subject to the provisions of this Act, or any provisions of the Statute law, a compliance with which may heretofore have been necessary in order that ships or vessels built and owned as aforesaid might be deemed British ships for the purposes of trade.

Definition  
of "Local  
Govern-  
ment."

<sup>2</sup>[27. The expressions "Local Government", "Local Governments of India" and "Government of the Presidency", as used in this Act, shall be deemed to include, and to have always included, every person who is a "Local Government" as defined in section 2, clause (10), of the <sup>3</sup>General Clauses Act, 1868.]

I of 1868.

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### PROCLAMATION.

The Governor General of India in Council hereby declares that all ships and vessels built or to be built within the limits of the Charter of the East India Company (as those limits are defined by the <sup>1</sup> Statute 3rd and 4th of Queen Victoria, Cap. 56, entitled "An Act further to regulate the trade of ships built and trading within the limits of the East India Company's Charter"), being owned by Her Majesty's subjects for whom the said Governor General in Council has power to legislate, and belonging, under the provisions of the Act passed by the Governor General in Council No. X of 1841, to any ports in the territories under the Government of the East India Company, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope and the territories and dependencies thereof.

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<sup>1</sup> This Act has been repealed "as to all Her Majesty's dominions" by the Statute Law Revision Act (No. 2) of 1890 (53 & 54 Vict., c. 51), Sch., Pt. I.

<sup>2</sup> S. 27 was inserted by s. 9 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).

<sup>3</sup> See now the General Clauses Act, 1897 (10 of 1897), s. 3 (20), under s. 4 of which the definition of "Local Government" as given in that clause applies to the expression as used in this Act.

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<sup>1</sup>THE SCHEDULE.

(See section 8.)

ACT X, 1841.

<sup>2</sup>CERTIFICATE OF SURVEY.

Name of Ship.	Port of intended Registry.	Official Number, if there has been any former Registry.

Whether a Sailing or Steam Ship; and, if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.

		Feet.	Tenths.
Number of Decks	Length from fore part of stem, under the bowsprit to the aft side of the head of the stern post . . . . .		
Number of Masts	Main breadth to outside of plank . . . . .		
Rigged . . . .	Depth in hold from tounage deck to ceiling at midships . . . . .		
Stern . . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards . . . . .		
Build . . . .	Length of engine-room, if any . . . . .		
Galleries . . .			
Head . . . .			
Framework . .			

<sup>1</sup> This schedule was added by s. 3 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891).<sup>2</sup> For form prescribed under section 8 instead of the form here given, see Genl. Stat. R. and O.



ACT No. XXIV OF 1841.<sup>1</sup>

An Act for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England, in regard to *the undisposed residue of the effects of Testators*, Illusory Appointments, the transfer of Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons and other like matters.

1. [*Extension of 11 Geo. 4 and 1 Will. 4, c. 46.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

2. \* \* \* \* \* The <sup>3</sup> Statute 11 George IV & 1 William IV, <sup>Extension of</sup> 11 Geo. IV &

<sup>1</sup> Short title, "The Illusory Appointments and Infants' Property Act, 1841." See the Indian Short Titles Act, 1897 (14 of 1897).

The whole Act, except so far as it relates to illusory appointments and infants, and except s. 5, was repealed by the Repealing Act, 1868 (8 of 1868).

The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribárh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1849, Pt. I, p. 44) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

<sup>2</sup> The words "And it is hereby enacted, that" at the beginning of s. 2 and the words "from the first day of January next" after the word "shall" in the same section were repealed by the Repealing Act, 1874 (16 of 1874).

\* 11 GEO. IV AND WM. IV, CAP. XLVI.\*

An Act to alter and amend the Law relating to Illusory Appointments.

[16th July, 1830.]

Whereas, by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of such property; and whereas appointments in exercise of such powers whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law: And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law; Be it therefore enacted, etc. Preamble.

That no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or nominal share of the property subjected to such power. Illusory appointments shall be valid in equity as well as at law.

<sup>3</sup> Short title, "The Illusory Appointments Act, 1830." See the Short Titles Act, 1896 (59 & 60 Vict., c. 14)

1 Wm. IV,  
caps. 46 and  
65.

Chapter 46, entitled "An Act to alter and amend the Law relating to Illusory Appointments," and the 'Statute 11 George IV & 1 William

1 Wm. IV,  
caps. 46 and  
65.

Not to affect any deed which declares the amount of the share; nor to give any other force to any appointment than the same would have had.

2. Provided always, and be it further enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid which shall declare the amount of the share or shares from which no object of the power shall be excluded.

3. Provided also, and be it further enacted and declared, that nothing in this Act contained shall be construed, deemed, or taken, at law or in equity, to give any other validity, force, or effect to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

11 GEO. IV & 1 WM. IV, CAP. LXV.\*

An Act for consolidating and amending the Law relating to Property belonging to Infants, Feme-Coverts, Idiots, Lunatics, and Persons of unsound Mind.

[23rd July, 1830.]

\* \* \* \* \*

Guardians of minors, etc., in order to the surrender and renewal of leases may apply to the Court of Chancery, etc., and by order may surrender such leases and renew the same, etc.

12. And be it further enacted, that in all cases where any person, being under the age of twenty-one years.....is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian or other person on his behalf,.....to apply to the Court of Chancery in England, the Courts of Equity of the Counties Palatine of Chester, Lancaster and Durham, or the Courts of Great Session of the Principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said Courts respectively such infant .....or his guardian, or any person appointed in the place of such infant .....by the said Courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take, in the place and for the benefit of such person under the age of twenty-one years, .....one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

\* \* \* \* \*

Charges attending renewal to be charged on the estates as the Court shall direct.

14. And be it further enacted, that every sum of money and other consideration paid by any guardian,.....or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant.....for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Courts and Lord Chancellor, intrusted as aforesaid, respectively shall direct and determine; and as to leases to be made upon surrenders by femes-covert, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises for the benefit of the person who shall advance the same.

New leases shall be to the same uses.

15. And be it further enacted, that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

Infants empowered to grant renewals of leases.

16. And be it further enacted, that where any person, being under the age of twenty-one years,.....might, in pursuance of any covenant or agreement, if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years

\* Short title, "The Infants' Property Act, 1830." See the Short Titles Act, 1896 (59 & 60 Vict., c. 14). As to the repeal of parts of the Act in England, see the Statute Law Revision Act, 1873 (36 & 37 Vict., c. 91).



IV, chapter 65, entitled "An Act for consolidating and amending the Law relating to property belonging to infants, feme-coverts, idiots, lunatics and persons of unsound mind," shall \* \* \* be extended to the territories of the East India Company, as far as it is applicable to the same.

3. [*Extension of 11 Geo. IV and 1 Wm. IV, c. 60.*] *Rep. by the Indian Trustee Act, 1866 (XXVII of 1866).*

absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant,..... by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian,..... or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise, as the Court by such order shall direct.

17. And be it further enacted, that where any person, being an infant under the age of twenty-one years, is or shall be seized or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or underlease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the said Court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being had to the nature of the lease, shall be reserved upon such lease; and the leases, and covenants and provisions therein, shall be settled and approved or by a Master of the said Court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named, and such counterparts shall be deposited for safe custody in the Master's office until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained; provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

Court of Chancery may authorize leases to be made of lands belonging to infants when it is to the benefit of the estate.

\* \* \* \* \*  
 \* 25. And whereas by an Act passed in the first year of the reign of King George the First intituled *An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the poor Clergy*,<sup>b</sup> it was enacted that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements: And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued; Be it further enacted, that so much of the said Act of the first year of the reign of King George the First, as is hereinbefore recited, shall be and the same is hereby repealed.

So much of 1 G. I, c. 10, s. 9, as enacts that agreements of guardians shall bind infants, repealed

26. And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last recited Act, if the same had not been repealed.

Such agreements may be made by guardians with the approbation of the Court.

<sup>a</sup> This section has been repealed in England by the Statute Law Revision Act, 1875 (36 & 37 Vict., c. 81), Schedule.

<sup>b</sup> "The Queen Anne's Bounty Act, 1716." See the Short Titles Act (59 & 60 Vict., c. 14).

Extension of  
11 Geo. IV  
and 1 Wm.  
IV, c. 47,  
s. 11.

4. <sup>1</sup> \* \* \* Section <sup>2</sup> \* 11 of the 11 <sup>3</sup>George IV and 1 William IV, chapter 47, entitled "an Act for consolidating and amending the laws for facilitating the payment of debts out of real Estate," shall <sup>1</sup> \* " be extended to the territories of the East India Company, as far as it is applicable in the same.

Saving of  
certain cases.

5. <sup>1</sup> \* : \* \* This Act shall not be construed to affect any case which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof <sup>4</sup> \* \*

Court of  
Chancery or  
Exchequer  
may order  
dividends of  
stock belong-  
ing to infants  
to be applied  
for mainte-  
nance.

32. And be it further enacted that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said Court, to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

<sup>1</sup> The words "And whereas it is expedient to adopt the amendments of the English Law touching the delay of action, suits, or other proceedings, by reason of the parol denurring; and touching conveyances made by infants under order of Courts; it is hereby enacted that", and the words "from the first day of January next" in s. 4, and the words "And it is hereby provided, that" in section 5 were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The figures and word "10 and" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

\* 11 GEO. IV & 1 WM. IV, CHAP. XLVII.<sup>a</sup>

An Act for consolidating and amending the Laws for facilitating the payment of debts out of real Estate.

[16th July, 1830.]

Infants  
to make  
conveyances  
under order  
of the Court.

XI. <sup>b</sup>And be it further enacted, that where any suit hath been or shall be instituted in any Court of Equity, for the payment of any debts of any person or persons deceased, to which their heir or heirs, devisee or devisees, may be subject or liable, and such Court of Equity shall decree the estates liable to such debts or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such Court shall direct, and, if necessary, compel such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said Court shall think proper and direct; and every such infant shall make such conveyance accordingly; and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons, being an infant or infants, was or were at the time of executing the same of the full age of twenty-one years.

<sup>4</sup> The words "or any proceedings at Law or in Equity commenced before the first day of January next," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

<sup>a</sup> Short title, "The Debts Recovery Act, 1830" See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

<sup>b</sup> The initial words "And be it further enacted that" were repealed in England by the Statute Law Revision Act, 1888 (51 & 52 Vict., c. 57), Schedule.

ACT No. V of 1843.<sup>1</sup>

[7th April, 1843.]

An Act for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

1. \* \* \* No public officer shall, in execution of any Prohibition, decree or order of Court, or for the enforcement of any demand of rent of sale of

<sup>1</sup> Short title, "The Indian Slavery Act, 1843." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code, Vol. I;  
the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by Regulation III of 1899, s. 3, B. & O. Code, Vol. I;  
the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), Ben. Code, Vol. I;  
Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, Bur. Code, Vol. I.

It has been applied to—

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code;  
the Chin Hills as regards Hill-tribes, by the Chin Hills Regulation, 1896 (5 of 1896), s. 3, Bur. Code, Vol. I;  
the Kachin Hill-tracts as regards Hill-tribes, by the Kachin Hill-tribes Regulation, 1895 (1 of 1895), s. 3, Bur. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . .	See Gazette of India, 1880, Pt. I, p. 672.
Aden . . . . .	Ditto 1879, Pt. I, p. 434.
West Jalpaiguri, the Western Dvārs, the Western Hills of Dārjiling, the Dārjiling Tarāi and the Damson Sub-division of the Dārjiling District . . . . .	Ditto 1881, Pt. I, p. 74.
The Districts of Hazāribāgh, Lohārdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mānbhum and Pargana Dhālbbhum and the Kolhān in the District of Singhbhum . . . . .	Ditto 1881, Pt. I, p. 504.
The Porahat Estate in the District of Singhbhum . . . . .	Ditto 1897, Pt. I, p. 1059.
The Scheduled portion of the Mirzāpur District . . . . .	Ditto 1879, Pt. I, p. 383.
Jaunsar Bāwar . . . . .	Ditto 1879, Pt. I, p. 332.
The Districts of Hazāra, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshāwar and Kohāt now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and	

persons or  
right to his  
labour on  
ground of  
slavery.

or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.<sup>1</sup>

Bar to en-  
forcement of  
rights arising  
out of alleged  
property in  
person as a  
slave.

2. \* \* \* \* No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

Bar to dis-  
possession of  
property on  
ground of  
owner's  
slavery.

3. \* \* \* \* No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave.

Penal offence  
against  
alleged slave.

4. \* \* \* \* Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

*ibid*, 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code)

. See Gazette of India, 1886, Pt. I, p. 48.

The District of Lahaul . . . Ditto 1886, Pt. I, p. 301.

The Scheduled Districts of the Central Provinces . . . Ditto 1879, Pt. I, p. 771.

The District of Sylhet . . . Ditto 1879, Pt. I, p. 631.

The Districts of Kámrup, Nagaong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . . . Ditto 1878, Pt. I, p. 533.

The Gáo Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Dvárs in the Goálpára District . . . Ditto 1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

The Districts of Kumáon and Garhwál . . . See Gazette of India, 1876, Pt. I, p. 606.

The Tarái of the Province of Agra . . . Ditto 1876, Pt. I, p. 505.

<sup>1</sup> The words "It is hereby enacted and declared, that" at the commencement of s. 1 were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The words "And it is hereby declared and enacted, that" in ss. 2 and 3 and the words "And it is hereby enacted that" in s. 4, were repealed by the Repealing Act, 1874 (16 of 1874).

ACT No. I OF 1846.<sup>1</sup>

[7th January, 1846.]

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company.

1, 2 & 3. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1874 (VI of 1874).*

4. \* \* \* \* \* The office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion: Provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding: Office of pleader open to persons duly certificated.

5. Provided \* \* \* \* \* that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter. Right of barrister to plead in all Courts.

<sup>1</sup> Short title, "The Legal Practitioners Act, 1846." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 4, to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Scheduled District of Sind. See Gazette of India, 1880, Pt. I, p. 672.

It has been declared under s. 3 (b) of the same Act that Act I of 1846 is not in force in the Scheduled Districts of Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I, p. 667, and Gazette of India, 1898, Pt. I, p. 872.

It is repealed in places to which the Pleaders, Mukhtárs and Revenue Agents Act, 1865 (20 of 1865), is extended, by s. 3 of that Act, and in places to which the Legal Practitioners Act, 1879 (18 of 1879), applies, by the Legal Practitioners Act, 1884 (9 of 1884), s. 9.

It has been repealed, in so far as it applies to Burma, by the Burma Laws Act, 1898 (13 of 1898), s. 18 (1), and Sch. V, Bur. Code, Vol. I.

It has been repealed excepting s. 5 in Bombay (except Sind and Aden) by Bom. Act 17 of 1920, Bom. Code, Vol. V.

<sup>2</sup> The words "And it is hereby enacted that" were repealed by the Repealing Act, 1874 (16 of 1874).

S. 4 does not extend to barristers and attorneys of the Supreme Courts, see s. 4 of the Pleaders Act, 1853 (20 of 1853), *infra*.

<sup>3</sup> The words "nevertheless, and it is hereby enacted" were repealed by the Repealing Act, 1874 (16 of 1874), Schedule, Pt. I.

Enactment  
to cease to  
have force,  
except for  
specified  
purposes

6. <sup>1</sup> \* \* <sup>2</sup> \* \* Section 52, Regulation II, 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act. Bom. Reg.  
II of 1827.

Private  
agreement  
between par-  
ties and  
pleaders.  
Calculation  
of pleaders'  
fees out of  
costs awarded  
in regular  
suits.

7. <sup>1</sup> \* \* \* Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and <sup>3</sup> \* it shall not be necessary to specify such agreement in the vakálatnáma: Provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in <sup>4</sup> [the section of the Regulation] specified in section 6 of this Act; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

In other  
cases.

Enforcement  
of private  
agreements.

8. <sup>1</sup> \* \* \* Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

Remunera-  
tion for  
opinions.

9. <sup>1</sup> \* \* <sup>5</sup> \* \* Persons taking <sup>6</sup> \* opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

Power of  
Sadr Amin  
to fine  
pleader.

Appeal.

10. <sup>1</sup> \* \* \* Whenever a pleader has rendered himself liable to a fine in the Court of a Principal Sadr Amin or Sadr Amin, it shall be competent to such Principal Sadr Amin or Sadr Amin to impose such fine; Provided that an appeal from all orders imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.

Rules ap-  
plied.

11. <sup>1</sup> \* \* \* The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsifs' Courts.

Power of  
Munsif to  
fine pleader.

12. <sup>1</sup> \* \* \* Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine.

<sup>1</sup> The words "And it is hereby enacted that" in ss. 6 to 12 were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The words and figures "section 25, Regulation XXVII, 1814, of the Bengal Code; section 25, Regulation XIV, 1816, of the Madras Code, and" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

<sup>3</sup> The word "that" was repealed by the Repealing Act, 1876 (12 of 1876), Schedule, Pt. I.

<sup>4</sup> These words were substituted for the words "the sections of Regulations" by the Repealing and Amending Act, 1891 (12 of 1891).

<sup>5</sup> The words and figures "so much of section 20, Regulation XXVII, 1814, of the Bengal Code, and of section 20, Regulation XIV, 1826, of the Madras Code as prescribes the rates of fees to be received by authorized pleaders for legal opinions, be repealed, and that," were repealed by the Repealing Act, 1876 (12 of 1876).

<sup>6</sup> The word "such" was repealed by *id.*

1848: Act XV.] *Supreme Courts' Officers Trading.*

Provided that an appeal from all orders imposing such fine shall lie to the Appeal Zila or City Judge, whose decision thereon shall be final.

13. <sup>1</sup> \* \* \* \* \* Nothing in this Act contained shall apply to vakils who may be employed in the Courts of the Village Munsifs, or before the Village or District pancháyats, or before the Collectors of Zilas, under the provisions of Regulations <sup>2</sup> IV, V, <sup>3</sup> VII, and XII, 1816, of the Madras Code.

Act not to affect certain vakils.

Mad. Recs  
IV, V, VII  
and XII of  
1816.

ACT No. XV OF 1848.<sup>1</sup>

[17th June, 1848.]

An Act to forbid trading by the Officers of the Supreme Courts.

For the better discharge of their duties by the officers of the under-mentioned Courts of Justice; It is enacted as follows:—

1. No officer of any of the Courts of Judicature established by Royal Charter within the territories subject to the government of the East India Company, or any Court established for the relief of insolvent debtors within the said territories, shall directly or indirectly by himself, or by any other person or persons on his behalf, accept from any person or persons any gift or reward for any act or behaviour in his office, other than his legal salary and fees and profits of office, or hold any office in any bank or public company, except as hereinafter excepted or carry on or be concerned in any dealings as a banker or trader or as agent, factor or broker either for his own advantage or for the advantage of any other person or persons, except such dealings as it may be part of the duty of any such officer by virtue of his office to carry on.

Prohibition, in case of officers of Supreme Courts, against accepting gifts;

holding certain offices; carrying on dealings.

2. This Act shall not be construed to forbid any officer of any of the said Courts, who is also a practising advocate, attorney, solicitor or proctor in any of the said Courts, from taking the usual fees and emoluments of advocates, attorneys, solicitors or proctors, nor to apply to any advocate, attorney, solicitor, proctor, sheriff, assignee, receiver or committee, so far as he is held to be in that capacity merely for some purposes an officer of any of the said Courts.

Exemption of officers who are also advocates, etc.

3. This Act shall not be construed to forbid any officer of any of the said Courts from holding any unpaid office in any society for charitable purposes or for the advancement of knowledge, or for the encouragement of science, art or manufactures.

Holding unpaid office in society.

<sup>1</sup> The words "And it is hereby enacted that" were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> For Regulation 4 of 1816, the Madras Village Courts Act, 1838 (1 of 1838), should now be read wherever that Act is in force. See section 2 (3) of that Act, Madras Code, Vol. I.

<sup>3</sup> Repealed by the Madras Civil Courts Act, 1873 (3 of 1873), Madras Code, Vol. I.

<sup>1</sup> Short title, "Supreme Courts' Officers Trading Act, 1848." See the Indian Short Titles Act, 1897 (14 of 1897).

Punishment  
for con-  
travention  
of Act.

4. Every officer of any of the said Courts who shall knowingly offend against this Act shall, on conviction thereof, be liable to be punished by deprivation of his office, and also, by the sentence of the Court before which he shall be convicted, may be declared incapable, and in that case shall become incapable, of being appointed to the same or any other office of the same Court, or to serve Her Majesty <sup>1</sup> \* \* \* in the territories under the government of the East India Company, or in such part of the said territories as shall be specified in the sentence, or in the discretion of the Court may be otherwise punished by fine or fine and imprisonment for his misdemeanour as to the Court shall seem fit, regard being had to the nature of his offence.

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ACT No. V of 1850.<sup>2</sup>

[8th March, 1850.]

An Act for freedom of the Coasting Trade of India.

Preamble.

WHEREAS by an Act of Parliament passed in the thirteenth year of <sup>12 & 13 Vict.</sup> the reign of Her Majesty, intituled "An Act to amend the laws in force <sup>c. 29.</sup> for the encouragement of British Shipping and Navigation,"<sup>3</sup> it is enacted with regard to the Coasting Trade of India that it shall be lawful for the Governor General of India in Council to make any regulations authorizing or permitting the conveyance of goods or passengers from one part of the possessions of the East India Company to another part thereof in other than British ships, subject to such restrictions or regulations as he may think necessary; It is enacted as follows:—

Freedom of  
ships other  
than British  
in coasting  
trade.

1. Goods and passengers may be conveyed from one part of the territories under the government of the East India Company to another part thereof, in other than British ships, without any restriction, other than is or shall be equally imposed on British ships, for securing payment of duties of customs or otherwise.

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<sup>1</sup> The words "or the East India Company" were repealed by the Repealing Act, 1876 (12 of 1876).

<sup>2</sup> Short title "The Indian Coasting Trade Act, 1850." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	.	.	.	.	See Gazette of India, 1880, Pt. I, p. 672.
Aden	.	.	.	.	Ditto 1879, Pt. I, p. 434.
The District of Sylhet	.	.	.	.	Ditto 1879, Pt. I, p. 631.

<sup>3</sup> See s. 6 of 12 & 13 Vict., c. 29. This Act was repealed by 17 & 18 Vict., c. 12, s. 4, but s. 6 of it was re-enacted by the Coasting-trade Act (16 & 17 Vict., c. 107), s. 329.



ACT No. XI of 1850.<sup>1</sup>

[15th March, 1850.]

An Act to amend <sup>2</sup>Act X of 1841.For amendment of <sup>2</sup>Act X of 1841, it is enacted as follows:—

Preamble.

1. [Repeal of s. 13 of Act X of 1841.] Rep. by Act XIV of 1870.

2. The passes which, under section 24 of the said Act, may be issued for conferring the privileges and advantages of a British ship, in certain cases, to any ship or vessel built within the dominions of a Native Prince or State in subordinate alliance with, or having subsidiary treaties with, the East India Company, may, after the passing of this Act, be issued in the like cases, and under the same restrictions, to any ship or vessel belonging to any such Native Prince or State, or their subjects, wherever the same may have been built.

Passes under Act X of 1841 to ships of allied Native States wherever built.

3. All ships or vessels, of whatever rig and of whatever tonnage, owned by British subjects, entitled to registry under <sup>2</sup>Act X of 1841, or owned by such Native Princes or States, or by their subjects entitled to passes under <sup>2</sup>Act X of 1841, as amended by this Act, employed only in coasting voyages, or between any port of the Continent of India and the Island of Ceylon, may be registered and obtain passes, and the tonnage may be marked, according to such rules <sup>3</sup> as shall be made from time to time by the Governor or Governor in Council of each Presidency.

Registry of, and passes to, certain coasting vessels.

4. The owners of coasting vessels, registered under section 3 of this Act, shall pay for each certificate of registry—

Fees for certificates of registry of such vessels.

for a vessel not exceeding the burthen of four tons, one rupee;  
 exceeding four tons and not exceeding twenty tons, five rupees;  
 exceeding twenty tons and not exceeding eighty tons, seven rupees;  
 exceeding eighty tons, for each ton two annas;

which fees shall be carried to the credit of the Government of the Presidency in which they are levied.

<sup>1</sup> Short title, "The Indian Registration of Ships Act (1841) Amendment Act, 1850"—see the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared by notification under s. 3 of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in Sind (Gazette of India, 1880, Pt. I, p. 672), in Aden (*ib.*, 1879, Pt. I, p. 434), and in the District of Sylhet (*ib.*, 1879, Pt. I, p. 631).

<sup>2</sup> *Supra*.

<sup>3</sup> For rules made under this section—

By the Government of India, see Genl. Stat. R. & O.

By the Local Governments, see different Local Rules and Orders.

Construction. 5. This Act shall be construed with and as part of <sup>1</sup>Act X of 1841.

ACT No. XII OF 1850.<sup>2</sup>

[22nd March, 1850.]

For avoiding loss by the default of Public Accountants.

Preamble. For better avoidance of loss through the default of public accountants :  
 It is enacted as follows :—

Public Accountants. 1. Every public accountant shall give security for the due discharge

<sup>1</sup> *Supra.*

<sup>2</sup> Short title, "The Public Accountants' Default Act, 1850." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared to be in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I, and in Upper Burma generally (except the Shan States) by s. 4 (1) of the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following other Scheduled Districts, namely:—

The Districts of Thár and Párkár, and the Upper Sindh Frontier		See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri, the Western Hills of Dárjiling, the Dárjiling Tarái and the Damson Sub-Division of the Dárjiling District	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dálbhum and the Kolhán in the District of Singhbhum	Ditto	1881, Pt. I, p. 504.
Kumáon and Garhwál	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Scheduled Districts of the Central Provinces	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1898, Pt. I, p. 870, and Fort St. George Gazette, 1898, Pt. I, p. 666.
Assam—see Note below (p. 37 <i>infra</i> ).		

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

The Tarái of the Province of Agra		See Gazette of India, 1876, Pt. I, p. 505.
The Scheduled Districts of the Punjab (some of the Districts now form part of the N.-W. F. Province, see Appendix, Punj. & N.-W. Code)	Ditto	1883, Pt. I, p. 505.
Ajmer and Merwára	Ditto	1878, Pt. I, p. 380.
Coorg	Ditto	1911, Pt. I, p. 1477.

of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office. to give security.

2. In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind, real or personal, or both, and with such sureties (regard being had to the nature of the office), as shall be required by any <sup>1</sup> rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office, subject to the approval of the Governor or Governor in Council of the Presidency or place. Amount and kind of security, and with what sureties.

3. Every person is a <sup>2</sup> public accountant within the meaning of this Act who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to the East India Company, or as Official Assignee or Trustee, or as sarbaráhkár, or in any other official capacity, with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons.<sup>2</sup> "Public accountant" defined.

4. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government. Prosecution of accountants and sureties.

5. All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant <sup>3</sup>. Enactments applied to proceedings by and against accountants.

6. [Validation of former rules.] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

As to the partial repeal of the Act in the Bombay Presidency, see the Bombay Land-revenue Code, 1879 (Bom. Act 5 of 1879), s. 2, and Sch. A, Bom. Code, Vol. II. As to its repeal in Assam, in which it was declared to be in force by notifications under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), Gazette of India, 1878 and 1879, Pt. I, pp. 523 and 631, respectively, see the Assam Land and Revenue Regulation, 1886 (1 of 1886), Assam Code.

<sup>1</sup> For rules made by the Government of—

(1) Bombay, see *Sindh Official Gazette*, 1896, Pt. I, pp. 198, 228, 241, 262 and 276.

(2) Madras, see No. 130 of the Standing Orders of the Board of Revenue.

(3) United Provinces, see List 3, p. 1 of Vol. I, of U. P. Loc. R. & O.

<sup>2</sup> In the United Provinces every manager or other servant of the Court of Wards entrusted with the receipt, etc., of moneys or securities for money on behalf of the Court of Wards has been declared to be a public accountant within the meaning of this Act, see U. P. Court of Wards Act, 1912 (U. P. Act 4 of 1912), U. P. Code, Vol. II.

<sup>3</sup> For the law relating to the recovery of revenue-arrears, see the Revenue Recovery Act, 1890 (1 of 1890).

ACT No. XVIII OF 1850.<sup>1</sup>

[4th April, 1850.]

## An Act for the protection of Judicial Officers.

## Preamble.

FOR the greater protection of Magistrates and others acting judicially;  
It is enacted as follows:—

Non-liability  
to suit of

**1.** No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for

<sup>1</sup> Short title, "The Judicial Officers' Protection Act, 1850." See the Indian Short Titles Act, 1897 (14 of 1897).

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I; in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code, Vol. I; in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, Bur. Code, Vol. I; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I; in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (Regulation 1 of 1900), Ben. Code, Vol. I; in certain tracts in the Chin Hills by the Chin Hills Regulation, 1896 (5 of 1896), s. 3, Bur. Code, Vol. I; and in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), s. 2.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Taluqs of Bhadrachalam, Rakapilli and the Rampa Country		See Gazette of India, 1879, Pt. I, p. 630.
The Scheduled Districts in Ganjam and Vizagapatam,		Ditto 1898, Pt. I, p. 870, and Fort St. George Gazette, 1898, Pt. I, p. 666.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum		See Gazette of India, 1881, Pt. I, p. 504.
Sindh		Ditto 1878, Pt. I, p. 482.
West Jalpaiguri and the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District	Ditto	1881, Pt. I, p. 74.
Kumáon and Garhwál	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of		

any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.<sup>1</sup>

officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders

*India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code)*

*See Gazette of India, 1886, Pt. I, p. 48.*

The District of Lahaul . . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
Coorg . . . . .	Ditto	1879, Pt. I, p. 747.
The District of Sylhet . . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Nowgong, Darrang, Sibságar, Lakhimpur, Goalpára (excluding the Eastern Duárs) and Cachar (excluding the North Cachar Hills)	Ditto	1878, Pt. I, p. 633.
The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Duárs in the Goalpára District . . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

The Taráí of the Province of Agra . . . . .	<i>See Gazette of India, 1876, Pt. I, p. 505.</i>
Ajmer and Merwára . . . . .	Ditto 1879, Pt. I, p. 380.

It has been extended to the Shan States generally by the Second Schedule to the Shan States Laws and Criminal Justice Order, 1895. *See Burma Gazette, 1895, Pt. I, p. 262, and Shan States Manual.*

<sup>1</sup> As to procedure for instituting criminal prosecutions against Judges and public servants, see the Code of Criminal Procedure, 1898 (Act V of 1898), s. 197.

ACT No. XIX of 1850.<sup>1</sup>

[11th April, 1850.]

## Concerning the binding of Apprentices.

## Preamble.

FOR better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments,

<sup>1</sup> Short title, "The Apprentices Act, 1850." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672.

West Jalpaiguri, the Western Duars, the Western Hills of Dárling, the Dárling Taráí, and the Damson Sub-division of the Dárling District . . . . . Ditto . . . . . 1881, Pt. I, p. 74.

The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum . . . . . Ditto . . . . . 1881, Pt. I, p. 504.

The Scheduled portion of the Mirzápur District . . . . . Ditto . . . . . 1879, Pt. I, p. 383.

Jaunsar Báwar . . . . . Ditto . . . . . 1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*) . . . . . Ditto . . . . . 1886, Pt. I, p. 48.

The Scheduled Districts of the Central Provinces . . . . . Ditto . . . . . 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam . . . . . Ditto . . . . . 1898, Pt. I, p. 870.

The District of Sylhet . . . . . Ditto . . . . . 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushai Hills) . . . . . Ditto . . . . . 1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumáon and Garhwál . . . . . See Gazette of India, 1876, Pt. I, p. 606.

The Taráí of the Province of Agra . . . . . Ditto . . . . . 1876, Pt. I, p. 505.

by which, when they come to full age, they may gain a livelihood; It is enacted as follows:—

1. Any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

Apprenticing of child between ten and eighteen years.

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

Evidence of age in questions as to right to service.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under the Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him, or any other Magistrate, of vagrancy, or the commission of any petty offence.

Powers of Magistrate or Justice acting for orphans, etc.

4. An orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors or managers thereof, as his or her guardians for this purpose.

Apprenticing of child brought up by public charity.

5. [*Apprenticing of such boy in sea service.*] Rep. by Act XXI of 1923.

6. [*Apprenticing of such boy in ship of the East India Company.*] Rep. by the Repealing Act, 1870 (XIV of 1870).

7. [*Who to be agent of master of apprentice serving in ship.*] Rep. by Act XXI of 1923.

8. Every contract of apprenticeship shall be in writing, according to the form given in the schedule (A) annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Form and contents of contract of apprenticeship.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but when the apprentice is bound by the governors, directors or managers of a public charity, the signature of two of them, or of their secretary or officer shall be sufficient on behalf of the persons binding the apprentice.

Signatures to contract.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief

Contract not valid unless essential as

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled Districts of Lahaul. See Gazette of India, 1886, Pt. I, p. 301.

Instruments of apprenticeship executed by a Magistrate under this Act, or by which a person is apprenticed by or at the charge of a public charity, are exempted from stamp duty by the Stamp Act, 1899 (2 of 1899), Sch. I, Art. No. 9.

prescribed  
and deposit-  
ed.  
Copies to be  
given to  
parties.

Magistrate of the place or district where it has been executed, <sup>1</sup> \* \*  
\* ; and the person in whose office any such contract is deposited  
shall give to each of the parties a copy thereof, certified under his hand,  
which certified copies shall be received as evidence of the contract, without  
formal proof of the handwriting of the Magistrate <sup>2</sup> \* \* \* .

Alteration of  
terms of  
service and  
termination  
of contract.

**11.** The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice if he is above the age of fourteen years: Provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section [9]<sup>3</sup> of this Act; and the Magistrate <sup>2</sup> \* \* \* shall thereupon make under his hand corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

Assignment  
of apprentice  
to new  
master.

**12.** The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof: Provided that such person shall by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned, to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively: And every such assignment shall be certified on the office copies of the contract under the hand of the Magistrate <sup>2</sup> \* \* \* according to the form given in Schedule (B) annexed to this Act.

Powers of  
Magistrate in  
case of com-  
plaint by  
apprentice  
against  
master.

**13.** Upon complaint made to any Magistrate in the said territories,<sup>5</sup> by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint;

<sup>1</sup> The words "or, if the apprentice is bound to the sea service, in the office of the person appointed under Act X, 1841, to make registry of ships at the port where the apprentice is to begin his service" were omitted by Act XXI of 1923.

<sup>2</sup> The words "or Registering Officer" in ss. 10 to 12 were omitted by *ibid.*

<sup>3</sup> The figure "9" was substituted for the figure "8" by the Amending Act, 1891 (12 of 1891).



and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees;

and, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and, if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour given to any apprentice by his master or the agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

Powers of master or his agent to chastise apprentice.

Liability of master or agent for assault, &c.

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped: or, if the offender be a girl, or in the case of any boy, the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, or on board the vessel to which he belongs, upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

Power of Magistrate in case of complaint by master against apprentice.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved; and such cancelling shall

Cancellation of contract for misconduct of apprentice.

be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the Magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

Appropriation of sum recovered for apprentice on cancellation of contract.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

Limitation of complaint of master against apprentice;

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act unless it be brought within one month after the cause of complaint arose, or, if the cause of complaint arose on board ship during a voyage, within one month after the arrival thereof at a port or place in the said territories; and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the agent of his master under this Act unless it be brought within three months after the cause of complaint arose, or, if the cause of complaint arose on board ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

of apprentice against master.

Effect of death of master during apprenticeship.

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Offer by representative of master to continue apprentice.

Offer to be certified on original contract and copies.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors <sup>1</sup>[or] administrators on the original contract of apprenticeship, and also on the office copies thereof, by the Magistrate <sup>2</sup> \* \* \* and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

Maintenance of apprentice whose master dies. Apprentice to continue to serve

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of his master, out of the assets left by him: Provided that during such three months such apprentice shall

<sup>1</sup> The word "or" was substituted for the word "and" by the Amending Act, 1891 (12 of 1891).

<sup>2</sup> The words "or Registering Officer" were omitted by Act XXI of 1923.

continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they appoint.

22. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolvency, during the apprenticeship, shall be discharged from all obligation under the contract of apprenticeship; and, if any premium was paid on binding him as an apprentice, he or a person by whom he was bound shall be entitled to claim the amount thereof as a debt against the estate of the bankrupt or insolvent.<sup>1</sup>

Effect of  
insolvency of  
master during  
apprentice-  
ship.

23. For the purposes of this Act all British subjects, wherever or of whatever parents born, as well as other persons in the territories under the Government of <sup>2\*</sup> \* India <sup>2\*</sup>, without the towns of Calcutta and Madras and the town and island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of India.

Persons  
amenable to  
jurisdiction of  
Magistrates'  
Courts.

24. An appeal shall lie from any order passed by any Magistrate without the said towns and island to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Appeal from  
orders of  
Mufassal  
Magistrates.

25. In this Act the words "master", "owner", "person", and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

Interpreta-  
tion of  
terms.

<sup>1</sup> Cf. the Bankrupt Law Consolidation Act, 1849 (12 & 13 Vict., c. 106), s. 170.

<sup>2</sup> The words "the East" before the word "India" and the word "Company" after the word "India" were repealed by the Repealing Act, 1874 (16 of 1874).

## SCHEDULE A.

## FORM OF AGREEMENT.

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between A. B., of \_\_\_\_\_, and C. D., of \_\_\_\_\_ witnesseth that the said A. B. doth this day bind E. F., a boy (or girl) of the age of \_\_\_\_\_ years completed, son (or daughter) of the said A. B. (or otherwise describing the relation in which A. B. and E. F. stand), to dwell with and serve the said C. D., as an apprentice, from this day forth for \_\_\_\_\_ years (in the case of a girl add, or until the time of her marriage, which shall first happen), during all which term the said apprentice shall duly and faithfully serve the said C. D., according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly and obediently, in all things, towards the said C. D. and his (or her) family. And the said C. D. for himself (or herself) and his (or her) executors and administrators, in consideration [of the premium or sum of \_\_\_\_\_ paid by the said A. B. to the said C. D., the receipt whereof the said C. D. hereby acknowledges, and] of the faithful service of the said E. F., doth covenant and agree with the said A. B., his (or her) executors and administrators, that he (or she) will teach or cause to be taught to the said E. F., in the best way and manner that he (or she) can, the trade (craft or employment) of a \_\_\_\_\_ during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing, and all other things necessary, fit and reasonable for an apprentice: (and further, *here insert any special covenants*).

In witness whereof the parties have hereunto set their hands and seals the day and year above written.

A. B.

L. S.

C. D.

L. S.

## SCHEDULE B.

## FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement.)

Be it known to all men that on the  
 day of \_\_\_\_\_ in the year \_\_\_\_\_ personally appeared before G.  
 H., Magistrate of \_\_\_\_\_, C. D., of \_\_\_\_\_ with E. F., his (or her)  
 apprentice and J. K., of \_\_\_\_\_, and desired that the agreement of  
 apprenticeship whereby the said E. F. was bound to the said C. D. might  
 be assigned and made over to the said J. K., and the said G. H., having  
 satisfied himself, by personal examination, of the said E. F. and by other  
 lawful ways and means, that such assignment is for the benefit of the  
 said E. F., and is made with the consent of

*If E. F. is not above the age of  
 fourteen years, the words between  
 brackets may be omitted.*

[the said E. F., and of] all persons whose  
 consent thereunto by law is required, doth  
 allow such assignment; and the contract of  
 apprenticeship whereby the said E. F. was on the \_\_\_\_\_ day of  
 in the year \_\_\_\_\_ bound to the said C. D. as an apprentice to  
 learn the trade (craft or employment) of a \_\_\_\_\_ shall henceforth  
 endure, unto the end of the said term, as if the said J. K. had been  
 originally party to the said deed, and had executed the same, in the  
 place and stead of the said C. D., and shall be bound, for himself (or  
 herself), his (or her) executors or administrators, to fulfil the covenants  
 by the said C. D. to be performed, and the said E. F. shall henceforth  
 be bound unto the said J. K., in like manner as he (or she) was by the  
 said agreement bound unto the said C. D.

C. D.

E. F.

J. K.

In witness whereof the said C.D., E.F., and J.K. have hereunto set  
 their hands before me the day and year above written.

G. H.,  
 Magistrate.

ACT No. XXI OF 1850.<sup>1</sup>

[11th April, 1850.]

An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company.

## Preamble.

WHEREAS it is enacted by section 9, Regulation VII, 1832, of the Ben. Reg. VII of 1832.

<sup>1</sup> Short title, "The Caste Disabilities Removal Act, 1850." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri	Ditto 1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhálbhum and the Kolhan in District of Singbhum	Ditto 1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District	Ditto 1879, Pt. I, p. 383.
Jaunsar Bāwar	Ditto 1879, Pt. I, p. 382.
The Districts of Pesháwar, Hazára, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát, now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code)	Ditto 1886, Pt. I, p. 48.
The District of Lahaul	Ditto 1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto 1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto 1898, Pt. I, p. 870.
Coorg	Ditto 1879, Pt. I, p. 747.
The District of Sylhet	Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	Ditto 1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District	Ditto 1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Upper Burma generally (except the Shan States). See Gazette of India, 1898, Pt. I, p. 89, and Ditto 1899, Pt. I, p. 98.

Bengal Code,<sup>1</sup> that “whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company; It is enacted as follows:—

1. So much of any law or usage now in force within the territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.

Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.

### ACT No. XXXIV OF 1850<sup>2</sup>.

[23rd August, 1850.]

#### An Act for the better Custody of State Prisoners.

WHEREAS doubts have been entertained whether State prisoners Preamble.

Kumáon and Garhwál . . . See Gazette of India, 1876, Pt. I, p. 606.

The Taráí of the Province of Agra . . . Ditto . . . 1876, Pt. I, p. 505.

<sup>1</sup> Bengal Regulation 7 of 1832 is repealed by the Bengal Civil Courts Act, 1871 (6 of 1871), which was repealed by the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (12 of 1887). Assam Code, Vol. I.

<sup>2</sup> Short title, “The State Prisoners Act, 1850.” See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code, Vol. I; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), s. 3, B. & O. Code, Vol. I; in Upper Burma generally, except the Shan States, by the Burma Laws Act, 1898 (13 of 1898), s. 4 (f) and Sch. I, Bur. Code, Vol. I; in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (Reg. 1 of 1900), Ben. Code, Vol. I; and in the Pargana of Manipur by the Manipur Laws Regulation, 1926 (11 of 1926), s. 2.

It has been extended to the Shan States generally by the Second Schedule to the Shan States Laws and Criminal Justice Order, 1895. See Burma Gazette, 1895, Pt. I, p. 262, and Shan States Manual.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672.

Aden . . . . . Ditto . . . 1879, Pt. I, p. 434.

confined under Regulation III, 1818, of the Bengal Code can be lawfully detained in any fortress, jail or other place within the limits of jurisdiction of any of the Supreme Courts of Judicature established by Royal Charter, and it is expedient that such doubts be removed, and the powers of the said Regulation extended to all the territories under the government of the East India Company, It is enacted as follows —

Officers to  
whom war-  
rant of

1. The warrant of commitment of any State prisoner, under Regulation III, 1818, of the Bengal Code, may be directed to the

Ben. Reg.  
III of 1818.

Ben. Reg.  
III of 1818.

West Jalpaiguri and the Western Dvārs . . .	See Gazette of India, 1881, Pt. I, p 74.	
The Districts of Hazáribágh, Loháidaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt I, p 504.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt I, p 383
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p 382.
The Districts of Házara, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán ( <i>Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát, now form the North-West Frontier Province, see Gazette of India, 1901, Pt I, p 857, and ibid, 1902, Pt I, p 575, but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s 5), Punjab and N-W Code</i> )	Ditto	1886, Pt I, p 48
The District of Lahaul . .	Ditto	1886, Pt I, p 301
The Scheduled Districts of the Central Provinces . .	Ditto	1879, Pt I, p 771
The District of Sylhet . .	Ditto	1879, Pt I, p 631
The Districts of Kámrup, Darrang, Naugong, Sibságar, Lakhimpur, Gáro Hills, Kházi and Jaintiá Hills, Nágá Hills, Cachar and Goalpará . . .	Ditto	1887, Pt I, p 78
The Mokoichang Sub-division of the Nágá Hills District . .	Ditto	1891, Pt I, p 252
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt I, p 1059
It has been extended, by notification, under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely —		
Kumáon and Garhwál . . .	See Gazette of India, 1876, Pt I, p 606	
Ajmer and Merwára . .	Ditto	1878, Pt I, p 380
The Andaman and Nicobar Islands . . . . .	Ditto	1882, Pt I, p 148.



Sheriff of the jail of any of the Supreme Courts of Judicature established by Royal Charter in the said territories, or to the commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State prisoner be confined, in any part of the said territories; and such warrant shall be sufficient authority for the detention of such State prisoner in the fortress, jail or other place mentioned in the warrant.

commitment  
of State  
prisoner  
under Ben.  
Regulation  
III of 1818  
may be ad-  
dressed.

Ben. Reg.  
III of 1818

2. Regulation III, 1818, of the Bengal Code, shall be extended and applied to every Sheriff, commandant or officer having any State prisoner in custody under the said Regulation, as explained and extended by this Act <sup>1</sup>.

Regulation  
III of 1818  
extended.

3. [*Confinement of State prisoners legalized.*] *Rep by the Repealing and Amending Act, 1897 (XII of 1897)*

## ACT No XXXVII of 1850 <sup>2</sup>.

[1st November, 1850.]

For regulating Inquiries into the behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries

<sup>1</sup> Prisoners detained under this Act are not affected by section 491 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>2</sup> See also Act III of 1858, *infra*.

<sup>3</sup> Short title, "The Public Servants (Inquiries) Act, 1850". See the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (I of 1897), s. 1.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared in force in the Santhāl Parganas by the Santhāl Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhāl Parganas Laws and Justice Regulation, 1899 (3 of 1899), s. 3, B. & O. Code, Vol. I, in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 1 (1), and Sch. I, Bur Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpāiguri	Ditto 1881, Pt. I, p. 74
The Districts of Hazārībāgh, Lohardāga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mān- bhūm, and Pargana Dālkhūm and the Kolhān in the Dis- trict of Singhbūm	Ditto 1881, Pt. I, p. 504
The Scheduled portion of the Mizāpur District	Ditto 1879, Pt. I, p. 383.
Jaunsar Bāwar	Ditto 1879, Pt. I, p. 382.
The Districts of Peshāwar, Hazāra, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (Portions of the Dis- tricts of Hazāra, Bannu, Dera Ismail Khān and Dera	

into the behaviour of public servants not removable <sup>1</sup> [from their appointments] without the sanction of Government, and to make the same uniform throughout the territories under the Government of <sup>2</sup> [India]; It is enacted as follows —

1. [Repeal of Acts] Rep. by the Repealing Act, 1870 (XIV of 1870).

Articles of  
charge to be  
drawn out for  
public  
inquiry  
into conduct  
of certain  
public  
servants

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of <sup>3</sup> [the Government not removable from his appointment without the sanction of the Government], it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

Authorities  
to whom  
inquiry may  
be com-  
mitted.  
Notice to  
a accused.

3. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, com-

*Ghāzi Khān and the Districts of Peshawar and Kohāt, now form the North-West Frontier Province, see Gazette of India, 1901, Pt I, p 857, and ibid, 1902, Pt I, p 575, but its application has been barred in that part of the Hazāra District known as Upper Tanawal, by the Hazāra (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N-W Code)*

See Gazette of India, 1886, Pt. I, p 48

The District of Lahaul . . . . .	Ditto	1886, Pt I, p 301
The Scheduled Districts of the Central Provinces . . . . .	Ditto	1879, Pt I, p 771.
The Scheduled Districts in Ganjam and Vizagapatam . . . . .	Ditto	1898, Pt I, p 870
The District of Sylhet . . . . .	Ditto	1879, Pt I, p 631
The rest of Assam (except the North Lushai Hills) . . . . .	Ditto	1897, Pt I, p 299
The Porahat Estate in the Singbhum District . . . . .	Ditto	1897, Pt I, p 1059

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

Kumāon and Garhwāl . . . . .	See Gazette of India, 1876, Pt I, p 606
The Tanāi of the Province of Agia . . . . .	Ditto 1876, Pt. I, p 505

As to the application of this Act in cases under the Bombay and Madras Civil Courts Acts, see the Bombay Civil Courts Act, 1869 (14 of 1869), s 33, and the Madras Civil Court Act, 1873 (3 of 1873), s 20, Bom Code, Vol I, and the Mad. Code, Vol I. For application of this Act to enquiries into the alleged misconduct of a Munsif, see the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (12 of 1887), s 28 (3), Assam Code, Vol I.

<sup>1</sup> These words were inserted by the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (1 of 1897), s 2.

<sup>2</sup> The word "India" was substituted for the words "the East India Company" by s. 2 of Act 1 of 1897.

<sup>3</sup> These words were substituted for the words "the East India Company, not removed from his office without the sanction of the same Government," by Act 1 of 1897.

missioners for the purpose notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry

4. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

Conduct of Government prosecution.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury, but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Charge by accuser to be written and verified. Penalty for false accusation.

Institution of inquiry by Government.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be.

Security from accuser left by Government to prosecute.

7. At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned

Power of Government to abandon prosecution and to allow accuser to continue it.

8. The commissioners shall have the same power of punishing contempt and obstructions to their proceedings, as is given to Civil and Criminal Courts by <sup>1</sup> [the Code of Criminal Procedure, 1898,] and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature there. When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

Powers of commissioners.

Their protection. Service of their process.

Powers of Court, etc., acting under commission.

<sup>1</sup> These words and figures were substituted for the word and figures "Act XXX, 1841," by the Repealing and Amending Act, 1914 (10 of 1914).

<sup>2</sup> See the Indian High Courts Act, 1861 (24 & 25 Vict., c 104), s. 11, which has now been repealed and re-enacted by the Government of India Act.

Penalty for disobedience to process.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed

Copy of charge and list to be furnished to accused.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

Procedure at beginning of inquiry.

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead " guilty " or " not guilty " to each of them, which pleas shall be forthwith recorded

Non-appearance of accused and admission of charge

ed with the articles of charge If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge

Prosecutor's right of address

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved. his address shall not be recorded.

Evidence for prosecution and examination of witnesses. Re examination by prosecutor.

13. The oral and documentary evidence for the prosecution shall then be exhibited; the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.

Power to admit or call for new evidence for prosecution. Accused's right to adjournment.

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned

Defence of accused

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

To be recorded only when written.

Evidence for defence, and examination of witnesses.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

17. [*Examination of witnesses and evidence by prosecutor.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

18. The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings

Notes of oral evidence.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him

Inquiry when closed with defence. Prosecutor when entitled to reply and give evidence. Accused not entitled to adjournment.

20. When the commissioners shall be of opinion that the articles of charge or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

Power to require amendment of charge and to adjourn.

Reasons for refusing adjournment to be recorded.

21. After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case

Report of commissioners' proceedings.

22. The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Power to call for further evidence or explanation.

Inquiry into additional articles of charge.

Reference of report of special commissioners. Final orders.

23. <sup>1</sup>[The powers of the Government under this Act may in all cases be exercised by the Governor General in Council, and when the person

Powers of Government under this Act by whom exercisable.

<sup>1</sup> S. 23 was substituted for the original section by s. 4 of the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (1 of 1897).

accused can be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government ]

Saving of enactments as to dismissal of certain officers. Commission under Act for their trial.

24.<sup>1</sup> Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

Saving of power of removal without inquiry under Act.

25. Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.

### ACT No. VIII of 1851.<sup>2</sup>

[4th July, 1851.]

## An Act for enabling Government to levy Tolls on Public Roads and Bridges

### Preamble.

WHEREAS it is expedient to enable Government to levy tolls upon roads and bridges; It is enacted as follows. —

### 1. [Repeal of Acts.] Rep. by the Repealing Act, 1870 (XIV of 1870).

<sup>1</sup> Repealed, as to the Lower Provinces and North-Western Provinces of Bengal, by the Principal Sadr Amins Act, 1868 (16 of 1868)

<sup>2</sup> Short title, "The Indian Tolls Act, 1851" See the Indian Short Titles Act, 1897 (14 of 1897).

Act 8 of 1851 was amended by the Indian Tolls Act, 1861 (15 of 1864), which is to be read with and taken as part of it

For power to extend the territorial operation of Act 8 of 1851, *see ib*, s 3.

Under s 1 of the Indian Tolls Act, 1888 (8 of 1888), Act 8 of 1851 and the Indian Tolls Act, 1864 (15 of 1864), are to be deemed in force throughout the territories administered by the Lieutenant-Governor of the Punjab on the 5th September, 1888, and from the 21st August, 1887, and the 24th March, 1864, respectively, to have been in force in the territories for the time being administered as part of the Punjab (which then included the Districts now forming the North-West Frontier Province).

Act 8 of 1851 has been repealed in the Presidency of Bombay by the Bombay Tolls Act, 1875 (3 of 1875), s 1, Bom Code, Vol II

It has been extended under s 3 of Act 15 of 1864 (*infra*) to Ajmer and Merwara, *see* Gazette of India, 1889, Pt II, p 502

It has been declared in force in the Central Provinces by the Central Provinces Laws Act, 1875 (20 of 1875), s 3, Central Provinces Code, in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), s 3, B & O. Code, Vol I, in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur Code, Vol I, and in the Punjab by the Indian Tolls Act, 8 of 1888, s 1

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled Districts, namely —

The Districts of Hazáribágh,  
Loháidaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt I, p 44),  
and Mánbhum, and Pargana Dhálbhum and Kolhán in the District of Singbhum

*See* Gazette of India, 1881, Pt I, p 504

2. The Governor of the Presidency of Fort William in Bengal, the Lieutenant-Governor of the North-Western Provinces of Bengal <sup>2</sup>[and] the Governor of the Presidency of Fort St. George in Council <sup>3</sup>\* \* \* may cause such rates of toll, <sup>4</sup>\* \* \* as they respectively think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Government; and may place the collection of such tolls under the management of such persons as may appear to them proper and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land-revenue.

Power to cause levy of tolls on roads and bridges within certain rates, and to appoint collectors.

Collectors' responsibilities. Their powers for recovery of toll.

3. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable, or any part of their burden of sufficient value to defray the toll, and, if any toll remains undischarged for twenty-four hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure and sale, and cause any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction:

The Districts of Hazāra, Peshāwar, Kohat, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshāwar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575, but its application has been barred in that part of the Hazāra District known as Upper Tanawal, by the Hazāra (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N-W Code)

See Gazette of India, 1886, Pt. I, p. 48.

The District of Lahaul

*Ibid* 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled District of Coorg, see Gazette of India, 1878, Pt. I, p. 45, to the Scheduled Districts in Ganjam and Vizagapatnam, see *ib*, 1899, Pt. I, p. 720, and to the Duchark and Gudlteri Mullahs, Yellavaram taluk, East Godavari Agency, see Notification No. 110, dated 22nd April, 1927, Fort St. George Gazette, 1927, Pt. I, p. 661.

<sup>1</sup> The authority of the Local Government in any part of British India not specified in s. 2 to which this Act and the Indian Tolls Act, 1864 (15 of 1864), may be or have been extended, is to be the same as if it had been specified in s. 2. See the Indian Tolls Act, 1888 (8 of 1888), s. 2 (a).

<sup>2</sup> The word "and" was inserted by the Indian Tolls Act, 8 of 1888, s. 5.

<sup>3</sup> The words "and the Governor of the Presidency of Bombay in Council" were repealed by *ibid*, s. 5.

<sup>4</sup> The words "not exceeding the rates mentioned in the schedule annexed to this Act" were repealed by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

Release of  
seized pro-  
perty on ten-  
der of dues.

Provided that, if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized

Exemptions  
from pay-  
ment of toll.

4. No tolls shall be paid for the passage <sup>1</sup> \* \* \* \* \* of Police-officers on duty, or of any person or property in their custody, <sup>2</sup>but no other exemption from payment of the toll levied under this Act shall be allowed

Assistance of  
collectors by  
Police-officers.

5. All Police-officers shall be bound to assist the toll-collectors, when required, in the execution of this Act, and, for that purpose, shall have the same power which they have in the exercise of their common police-duties

Penalty for  
offences  
under Act.

6. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge, or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand, or take any other or higher toll than the lawful toll, or under colour of this Act seize or sell any property knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable on conviction before a Magistrate to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the Magistrate to the person aggrieved; but this remedy shall not be deemed to bar or affect his right to have redress by suit in the Civil Court \* \* \* <sup>3</sup>.

Compensation  
to person  
aggrieved.  
Savung of his  
right to sue

Exhibition  
of table of  
tolls, and

7. A table of the tolls authorized to be taken at any toll-gate or station shall be put up in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district, to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll

statement of  
penalties.

Application  
of proceeds  
of tolls.

8. The tolls levied under this Act shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the construction, repair and maintenance of roads and bridges within the presidency<sup>4</sup> in which they are levied.

[Schedule] Repealed by s 2 and Sch. I of Act 38 of 1920.

<sup>1</sup> The words "of troops and military stores and equipages on their march or" were repealed by s 8 of the Indian Tolls (Army) Act, 1901 (2 of 1901)

<sup>2</sup> In Upper Burma for the last sixteen words of this section the words "or of any person or property exempted by order of the Local Government from payment of tolls" have been substituted by the Burma Laws Act, 1898 (13 of 1898), s 7, Bur Code, Vol I

<sup>3</sup> The words "of the Zillah" were repealed by the Repealing Act, 1876 (12 of 1876)

<sup>4</sup> The word "presidency" in s 8 is to be deemed to mean and to have meant the territories under the administration of a Local Government See the Indian Tolls Act, 1888 (8 of 1888), s. 2 (2).



ACT No. VIII of 1852 <sup>1</sup>

[6th February, 1852.]

An act for remunerating the Sheriffs of Calcutta, Madras and Bombay for the execution of Mufassal Process under Act XXIII of 1840<sup>2</sup>.

FOR making better provision for the Sheriffs of Calcutta, Madras and Bombay, in remuneration for the execution of legal process issued by Courts out of the said towns, respectively; It is enacted as follows:—

1. The several Sadr Courts of the presidency of Fort William in Bengal, and the Sadr Courts of the Madras and Bombay presidencies, respectively, shall make, and from time to time amend, a table of reasonable fees, to be taken on account of the execution by the Sheriff in such presidency of any legal process issued by any Court, Judge or Magistrate, beyond the jurisdiction of the several Supreme Courts established by Royal Charter in Calcutta, Madras and Bombay, and of the sums to be allowed for costs of advertisements or other notifications of sales of property, according to the amount of the decrees to be satisfied by such sales; which fees and sums shall be payable by the party applying for the process before it is sent to the Sheriff for execution, and shall be deemed costs in the cause.

Sadr Courts to make and amend table of fees of Sheriffs for executing Mufassal process, and of allowances for advertisements, etc. By whom and when payable.

2. The said table of fees and sums, when made or amended as aforesaid, shall be submitted by the Sadr Court of the Lower Provinces of the presidency of Fort William to the Governor of Bengal, and by the Sadr Court of the North-Western Provinces of the said presidency to the Lieutenant-Governor of those Provinces, and by the Sadr Courts of Madras and Bombay, respectively, to the Governor in Council of the presidencies in which such Courts respectively have jurisdiction, for his approval; and the said table of fees and sums shall have full force and

Submission of table for approval.

When to have force.

<sup>1</sup> Short title, "The Sheriffs' Fees Act, 1852." See the Indian Short Titles Act, 1897 (14 of 1897).

This Act has been declared, by notification under s. 3 of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . See Gazette of India, 1880, Pt. I, p. 6.

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhūm, and Pargana Dhálbhūm and the Kolhán in the District of Singhbhum .

Ditto 1881, Pt. I, p. 504

<sup>2</sup> See now the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3. See also the Code of Civil Procedure (Act V of 1908), s. 3.

effect, and the fees and sums therein mentioned may be lawfully demanded and taken, from and after the approval thereof by the said Governor, Lieutenant-Governor or Governor in Council, as the case may be.

Account of  
fees, etc.

3. Every such Court, Judge and Magistrate, issuing process as aforesaid, shall cause a separate account to be kept of the amount of all fees and sums so paid, and shall from time to time, as directed by Government, cause the amount thereof to be paid into the local treasury

Payment into  
treasury.

Payment to  
Sheriff.

4. The Government of each of the presidencies and provinces aforesaid, shall twice in each year account for and pay over to the Sheriff for the time being the amount of fees and sums so paid, after deducting all necessary expenses of receiving and keeping account thereof, and remitting the net proceeds thereof to Calcutta, Madras or Bombay, as the case may be; or where the amount has accrued in the shrievalty of more than one Sheriff, shall apportion the sum paid accordingly between the Sheriff for the time being and the then late Sheriff

Composition  
with Sheriff.

5. The said Governments, respectively, may compound with the Sheriff for a monthly payment to be made to him instead of such fees and sums, and during such composition may appropriate the said fees and sums to the purposes of Government

Additional  
fee for  
effecting  
sales,

6. Over and above such fees and sums, or any such monthly payment received instead of such fees and sums, the Sheriff shall be entitled to a fee after the rate of two rupees eight annas for each hundred rupees of the value of any goods or property taken and sold by him in execution of any process issued by any Court, Judge or Magistrate beyond the local jurisdiction of the said Supreme Courts, which fee shall be taken to cover all expenses connected with the seizure and sale, except the expense of advertisements.

Fee for  
execution  
against  
person.

7. No fee, estimated upon the amount of the sum for which any person is taken in execution, shall be payable to the Sheriffs of Calcutta, Madras or Bombay, or any of their bailiffs, for taking the body of any person in execution on any process issued by any Court, Judge or Magistrate out of the local jurisdiction of the said Supreme Courts, respectively, but instead thereof such fees shall be payable to the Sheriff for taking the body of any person in execution of any such process as shall be settled, from time to time, by the Sadr Court as aforesaid

Liability of  
Sheriff in  
case of  
escape of  
person  
taken in  
execution,

8. If any person taken in execution on any such process shall escape out of the legal custody of the Sheriff, the Sheriff shall not be liable to an action of debt for such escape, but shall be liable only to an action upon the case for damages in consequence of such escape sustained by the person or persons at whose suit the prisoner was taken

ACT No. II OF 1853.<sup>1</sup>

[4th February, 1853.]

An Act to remove doubts as to the liability of all subjects of Her Majesty to the same jurisdictions as Natives in respect of public and Police duties and public charges incident to the holders of land or their local Agents or Managers.

<sup>1</sup> Short title, "The Landholders' Public Charges and Duties Act, 1853." See the Indian Short Titles Act, 1897 (14 of 1897).

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874) s. 3.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur Code; Vol. I

the Santhál Parganas, by the Santhál Parganas Settlement Regulation, 1886 (3 of 1886), s. 2, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), B & O Code, Vol. I

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672.

West Jalpáiguri . . . . . Ditto 1881, Pt. I, p. 74.

The Districts of Hazáribágh, Lohárdága (now the Raichí District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbhum . . . . . Ditto 1881, Pt. I, p. 504.

The Scheduled portion of the Muzápm District . . . . . Ditto 1879, Pt. I, p. 383.

Jaunsar Báwna . . . . . Ditto 1870, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Baunú, Dera Ismaíl Khán and Dera Gházi Khán. [Portions of the Districts of Hazára, Baunú, Dera Ismaíl Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application has been limited in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N-W Code] . . . . . Ditto 1886, Pt. I, p. 48.

**Preamble.**

WHEREAS by virtue of <sup>1</sup>Act No. IV of 1837 it is lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories under the government of the East India Company;

and whereas doubts have arisen whether all subjects of Her Majesty acquiring or holding property in land, or in any emoluments issuing out of land, or acting as local agents or managers of such property, are subject to the same jurisdictions as Natives for enforcing the discharge of public and police duties incident to the holding of such property, or for the enforcement of public charges and assessments upon or in respect thereof;

and whereas it is just and reasonable that all persons who may think fit to hold such property, or to be the local agents or managers thereof, should be liable to the public burthens and duties incident thereto, and in case of neglect or refusal to discharge the same, should be subject to the same jurisdictions as Natives,

It is therefore declared and enacted as follows:—

Non-  
exemption  
from public  
charges or  
duties of land-  
holders, etc.,  
by reason of  
place of birth  
or of descent.

1. No person whatever, being the owner, holder or framer of any property in land, or in any emoluments issuing out of land, in any part of the said territories, whether in perpetuity or for a term, or being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof.

Amenability  
to laws, etc.,  
for default in  
respect of  
such charges  
and duties

2. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations and procedure, and to the same jurisdictions, as if he were a Native of the said territories

The District of Lahaul	<i>See Gazette of India, 1886, Pt I, p 301</i>	
The Scheduled Districts of the Central Provinces	Ditto	1879, Pt I, p. 771
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1898, Pt I, p 870
The District of Sylhet . . .	Ditto	1879, Pt I, p. 631.
The rest of Assam (except the North Lushái Hills) . . .	Ditto	1897, Pt I, p 299
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt I, p 1059

It has been extended, by notification under s 5 of the last-mentioned Act to the Scheduled Districts of Kumaón and Garhwál *See Gazette of India, 1876, Pt I, p. 606*

<sup>1</sup> *See supra.* p. 2

ACT No. XX of 1853<sup>1</sup>.

[8th December, 1853]

## An Act to amend the Law relating to Pleaders in the Courts of the East India Company.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company; It is enacted as follows.—

1. [*Repeal of enactments*] *Rep by the Repealing Act, 1870 (XIV of 1870).*

2. "No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding

Pleader not bound to attend Court except at hearing of cause in which he is employed.

3. Every attorney on the roll of any or Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

Right of Supreme Court attorneys to plead in all Sadr Courts.

4. That part of section 4, Act No. I of 1846<sup>1</sup>, which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts; but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the

Barristers and attorneys of Supreme Courts not required to produce certificate of character, etc., but may plead in all subordinate Courts.

<sup>1</sup> Short title, "The Legal Practitioners Act, 1853." See the Indian Short Titles Act, 1897 (14 of 1897)

The Act has been declared to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), ss 4 and 5

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Scheduled District of Sindh. See Gazette of India, 1880, Pt. I, p. 672, and in the Scheduled Districts in Ganjam and Vizagapatnam, see *ibid.*, 1898, Pt. I, p. 870

It has been repealed in places to which the Pleaders, Mukhtárs and Revenue Agents Act, 1865 (20 of 1865), is extended, see s 8, and in places to which the Legal Practitioners Act, 1879 (18 of 1879), applies, by the Legal Practitioners Act, 1884 (9 of 1884), s 9. Act 20 of 1865 was repealed by Act 18 of 1879

It has been repealed, so far as it applies to Burma, by s 18 (1) of the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I

<sup>2</sup> Section 2 of this Act has been repealed in Bombay by the Bombay Pleaders Act 17 of 1920, Bom. Code, Vol. V

<sup>3</sup> *Supra*, p. 31

Court is to be addressed or to any other matter connected with pleading therein.

ACT No. XXXI of 1854<sup>1</sup>.

[16th December, 1854.]

An Act<sup>2</sup> \* \* \* \* to simplify the modes of conveying land in cases to which the English Law is applicable.

Preamble.

WHEREAS it is expedient, in cases to which the English law applies,

<sup>1</sup> Short title, "The Conveyance of Land Act, 1854" See the Indian Short Titles Act, 1897 (14 of 1897)

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672.

West Jalpaiguri . . . . . Ditto 1881, Pt. I, p. 74

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 41), and Mámbhum, and Paigana Dhálbhum and the Kolhán in the District of Singhbhum . . . . . Ditto 1881, Pt. I, p. 504

The Scheduled portion of the Mizápur District . . . . . Ditto 1879, Pt. I, p. 383.

Jaunsai Bāwai . . . . . Ditto 1879, Pt. I, p. 382.

The Districts of Hazáia, Pesháwar, Kohát, Bannu, Dera Ismaíl Khán and Dera Gházi Khán [*Portions of the Districts of Hazáia, Bannu, Dera Ismaíl Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application has been barred in that part of the Hazáia District known as Upper Tanawal, by the Hazáia (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Codes*] . . . . . Ditto 1886, Pt. I, p. 48.

The Scheduled Districts of the Central Provinces . . . . . Ditto 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam . . . . . Ditto 1898, Pt. I, p. 870

The District of Sylhet . . . . . Ditto 1879, Pt. I, p. 631.

The rest of Assam (except the North Lusháí Hills) . . . . . Ditto 1897, Pt. I, p. 631.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul See Gazette of India, 1886, Pt. I, p. 301

<sup>2</sup> The words "to abolish real actions and also fines and common recoveries and" were repealed by the Repealing Act, 1874 (16 of 1874)

1 \* : \* \* to simplify the modes of conveying land, and to exempt the purchasers of trust-property from the liability to see to the application of the purchase money; It is enacted as follows:—

1. [*Real actions, fines and recoveries abolished*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. Every tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple, either at law or in equity, in any lands or hereditaments, not being under any disability, shall have power to dispose of such lands and hereditaments against the issue in tail, and all persons whose estates are to take effect after the determination or in defeazance of his own, or to enlarge his said estate into an estate in fee-simple, by any deed declaring an intention so to dispose of the said lands or hereditaments, or to enlarge his estate therein; and every tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple, who shall be under the disability of coverture, shall have power to dispose of or enlarge her said estate in manner aforesaid, by any deed declaring her intention so to do, and acknowledged by her as hereinafter mentioned:

*Tenant in tail may dispose of or enlarge his estate by simple deed, etc.*

Provided that every disposition under this section shall be subject to the rights of all persons in respect of estates prior to the estate tail or other estate of inheritance which is the subject of such disposition, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made

3. Every married woman who, either alone, or jointly with her husband is possessed of or entitled to any estate or interest in or any power to be exercised over, any lands or hereditaments, which, but for the passing of this Act, she might have disposed of or extinguished by levying a fine, or suffering a recovery, or by joining in either of such assurances, shall have power by deed, to be acknowledged by her as hereinafter mentioned, to dispose of, release, surrender or extinguish any such estate, interest or power, as fully and effectually as if she were an unmarried woman.<sup>2</sup>

*Married woman, with husband's concurrence, may dispose of her estate by deed acknowledged.*

4. The provisions of the last two preceding sections shall, so far as circumstances will admit, apply to money subject to be invested in lands or other hereditaments

*Secs. 2 and 3 to apply to money subject to be invested in land.*

5. No deed to be executed by a married woman under the provisions hereinbefore contained shall, so far as regards the interest of such married woman, be valid or effectual unless her husband concur therein, nor unless the deed be acknowledged in manner hereinafter prescribed

*Execution of deeds by married women*

<sup>1</sup> See second footnote on pre-page

<sup>2</sup> See also the Repealing Act, 1870 (XIV of 1870) s. 77

before a Judge of one of Her Majesty's Supreme Courts, or before a Judge or other covenanted officer of the East India Company exercising civil jurisdiction in the place wherein such deed shall be acknowledged, or before some Commissioner appointed either especially for the occasion, or appointed as a permanent Commissioner by one of Her Majesty's said Courts to take such acknowledgments.<sup>1</sup>

If husband be lunatic, etc., Court may direct acknowledgment by deed without his concurrence, saving right of the husband, etc.

6. If the husband of any married woman, desirous of enlarging, passing or destroying any estate, interest or power, by a deed to be acknowledged by her under this Act, shall be a lunatic, idiot or of unsound mind, whether he shall have been found such by inquisition or not, or from any other cause shall be incapable of executing a deed, or if his residence shall not be known, or if he shall be in prison, or living apart from his wife either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatever, it shall be lawful for any of Her Majesty's said Courts, by an order to be made in a summary way upon the application of such married woman, and upon such evidence as to the Court shall seem meet, to dispense with the concurrence of her husband in the deed so to be acknowledged; and any deed to be executed or acknowledged by her in pursuance of such order shall (but without prejudice to the rights of her husband as then existing, independently of this Act) be as valid and effectual as if he had concurred therein.<sup>2</sup>

Supreme Courts may appoint commissioners to take such acknowledgments.

7. It shall be lawful for any of Her Majesty's said Courts to appoint by its order, under the seal of the Court, to be published in the Government Gazette or otherwise as the Court shall direct, permanent commissioners, either by name or office, and to appoint from time to time, under special commissions, special commissioners, any one of whom shall be authorized and empowered unless the act is directed to be done before more than one to take the acknowledgment of any deed by any married woman, who, by reason of her place of residence, or ill-health, or other sufficient cause, shall be unable to make such acknowledgment before one of the Judges or other officers described in the preceding section

Examination of married woman apart from her husband.

8. Every such Judge, officer or commissioner as aforesaid, before he shall receive the acknowledgment by any married woman of any deed to be acknowledged by her under this Act, shall examine her apart from her husband touching her knowledge of such deed, and shall ascertain whether she understands its object, and freely and voluntarily consents to the same, and unless she appears to understand its object, and freely and voluntarily to consent to such deed, he shall not permit her to acknowledge the same, and in such case such deed, so far as relates to the execution thereof by such married woman, shall be void.<sup>3</sup>

<sup>1</sup> Cf. the Fines and Recoveries Act, 1833 (3 & 4 Will 4, c 74), s 79

<sup>2</sup> *Ibid.*, s 91

<sup>3</sup> *Ibid.*, s 80



9. Every Judge, officer or commissioner taking such acknowledgment under this Act shall, at the time of taking the same, sign a memorandum to be endorsed on or written at the foot, or in the margin of such deed, which memorandum shall be to the following effect, namely, "this deed, marked ( ), was this day produced before me and acknowledged by therein named to be her act and deed, previous to which acknowledgment the said was examined by me separately and apart from her husband, touching her knowledge of the contents of the said deed, and her consent thereto and appeared to understand the same and declared the same to be freely and voluntarily executed by her."

Judge, etc.,  
to sign  
memorandum  
of acknow-  
ledgment.

10. Every deed executed by a married woman and hereby required to be acknowledged shall, so far as regards the interest of such married woman, take effect only from the time of the acknowledgment thereof.

Deed of mar-  
ried woman  
when to take  
effect.

11. It shall not be necessary for any person producing a deed so acknowledged in any Court of Justice to prove the handwriting or authority of the Judge or other officer, or the commissioner taking such acknowledgment, but if such memorandum purports to have been in substance regularly made and signed, the deed shall be presumed to have been duly acknowledged by the party until the contrary is shown.

Deed when  
presumed to  
have been  
duly acknow-  
ledged

12. Nothing in this Act contained shall abridge, extend or affect the powers of alienation or disposition which any married women might have exercised over any property or rights, otherwise than by levying a fine or suffering a recovery, or by joining in one of such assurances before the passing of this Act.

Saving of  
married  
women's  
powers of  
alienation.

13. In any deed or will executed after this Act comes into operation, and disposing of immoveable property situate in the territories <sup>2</sup> \* \* \* under the Government of \* \* \* India <sup>3</sup>, wherein contingent estates are limited without the appointment of any trustees to preserve such contingent estates the same shall be, to all intents and purposes, as effectually protected by the law as if such trustees had been duly appointed.

Contingent  
estates  
without  
trustees to  
preserve to  
be protected.

14. Any estate or interest in immoveable property, situate within the said territories, whether in possession, remainder or reversion, may, in addition to any other mode of conveyance or release which is now valid, be conveyed, passed or released by a simple deed, whether such deed operate under the <sup>4</sup>Statute of Uses or not.

Estates may  
be conveyed,  
etc., by sim-  
ple deed

<sup>1</sup> Of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 71), s. 84

<sup>2</sup> The words "in the possession and" were repealed by the Repealing Act, 1873 (12 of 1876)

<sup>3</sup> The words "the East" and the word "Company" were repealed by the Repealing Act, 1874 (16 of 1874)

<sup>4</sup> See the Real Property Act, 1845 (8 & 9 Vict., c. 106), ss. 2 and 4, respectively.

No conveyance to operate tortiously.

15. No conveyance of any kind shall operate to destroy, impair or affect any estate or interest which the conveying party has no right to destroy, impair or affect or beyond the extent to which he may impair or affect the same.

Words of limitation not necessary in a deed to give estate by inheritance.

16. It shall not be necessary in any deed relating to immoveable property situate within the said territories, to be executed after the passing of this Act, to add words of limitation to heirs, when the intention is to give the absolute interest to a person and his heirs general; but a gift, grant or other conveyance of immoveable property to, or in favour of, any person shall be taken to give him the entire and absolute interest in the nature of an estate in fee-simple, unless such construction is rendered inadmissible by the other contents of the deed, and when in any deed or will executed after the passing of this Act any property is given to a person for life or for other freehold interest, and afterwards in the same deed, or will, is limited to his heirs or heir special the estates shall not unite, but the limitation to the heirs shall be a limitation of an estate to be taken by the heirs by purchase

Estate limited to heirs shall not unite with prior life-estate

*Bond fide* purchaser not required to see to application of trust money.

17. <sup>1</sup>When any property is sold, the proceeds of which are subject to any trust, the *bond fide* purchaser of the property shall not in any case be bound to see to the application of the purchase-money to the purposes of the trust.

Act to apply only to cases governed by English law.

18. Nothing in this Act contained shall extend to any case to which the English law is not applicable

19. [*Interpretation-clause*] *Rep by the Repealing Act, 1874 (XVI of 1874).*

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<sup>1</sup> Section 17 is repealed in places to which the Transfer of Property Act, 1882 (4 of 1882), extends or is extended by Act 4 of 1882, s. 2 and the Schedule

ACT No. XI of 1855.<sup>1</sup>

[27th March, 1855.]

An Act relating to *mesne profits and* to improvements made by holders under defective titles in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law is applicable, to limit the liability for *mesne profits and* to secure to bona fide holders under defective titles the value of improvements made by them, It is enacted as follows:—

<sup>1</sup> Short title, "The Mesne Profits and Improvements Act, 1855" See the Indian Short Titles Act, 1897 (11 of 1897).

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . .	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpáiguri . . . . .	Ditto 1881, Pt. I, p. 74.
The Districts of Hazárbágh, Lohardága (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum . . . . .	Ditto 1881, Pt. I, p. 504.
The Scheduled portion of the Mizápur District . . . . .	Ditto 1879, Pt. I, p. 388.
Jaunsar Báwar . . . . .	Ditto 1879, Pt. I, p. 382
The Districts of Hazárá, Pesháwar, Kohát, Bannu, Dera Ismaíl Khán and Dera Gházi Khán [Portions of the Districts of Hazára, Bannu, Dera Ismaíl Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575; but its application to that portion of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code] . . . . .	Ditto 1886, Pt. I, p. 48
The Scheduled Districts of the Central Provinces . . . . .	Ditto 1879, Pt. I, p. 771
The Scheduled Districts in Ganjam and Vizagapatam . . . . .	Ditto 1898, Pt. I, p. 870
The District of Sylhet . . . . .	Ditto 1879, Pt. I, p. 631
The rest of Assam (except the North Lusháí Hills) . . . . .	Ditto 1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál See Gazette of India, 1876, Pt. I, p. 606

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India. 1886. Pt. I. n. 301.

No person chargeable with rent *bonâ fide* paid to holder under defective title.

1. <sup>1</sup>No person shall be chargeable with any rents or profits of any immoveable property which he has *bonâ fide* paid over to any person of whom he *bonâ fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made had no right to receive such rents or profits.

Value of improvements made by *bonâ fide* holders under defective titles secured to them.

2. If any person shall erect any building or make an improvement upon any lands held by him *bonâ fide* in the belief that he had an estate in fee-simple, or other absolute estate, and such person, his heirs or assigns, or his or their under-tenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement.

Amount how fixed.

Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction

Act to apply only to cases governed by English Law.

3. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

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<sup>1</sup> The words in italics in the title and in the preamble, together with s. 1, are repealed in places to which the Transfer of Property Act, 1882, extends or is extended. See the Transfer of Property Act, 1882 (4 of 1882), s. 2 and the Schedule

ACT No. XII of 1855.<sup>1</sup>

[27th March, 1855.]

An Act to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs.<sup>2</sup>

WHEREAS it is expedient to enable executors, administrators or repre- Preamble.

<sup>1</sup> Short title, "The Legal Representatives' Suits Act, 1855" See the Indian Short Titles Act, 1897 (14 of 1897)

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3

It has also been declared in force in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B &amp; O Code, Vol. I, in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B &amp; O Code, Vol. I, and in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4, Bur. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See Gazette of India, 1880, Pt. I, p. 672.
West Jharkhand	Ditto 1881, Pt. I, p. 74.
The Districts of Nazimugh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhurn, and Pargana Dhulbhurn and the Kollan in the District of Singhbhum	Ditto 1881, Pt. I, p. 504.
The Scheduled portion of the Muzipur District	Ditto 1879, Pt. I, p. 333
Jaunsai Bawar	Ditto 1879, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. [Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application to that part of the Hazara District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N-W Code]	Ditto 1886, Pt. I, p. 48
The District of Lahaul	Ditto 1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto 1870, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto 1898, Pt. I, p. 870.
The District of Sylhet	Ditto 1879, Pt. I, p. 631
The rest of Assam (except the North Lushai Hills)	Ditto 1807, Pt. I, p. 299.
The Potaht Estate in the Singhbhum District	Ditto 1897, Pt. I, p. 1059.
It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—	
Kumaon and Garhwāl	See Gazette of India, 1876, Pt. I, p. 606.
The Tanai of the Province of Agra	Ditto 1876, Pt. I, p. 505.
<sup>2</sup> See the Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 2.	

sentatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives; It is enacted as follows:—

Executors  
may sue and  
be sued in  
certain cases  
for wrongs  
committed in  
lifetime of  
deceased

1. An action may be maintained by the executors, administrators or representatives of any person deceased for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death <sup>1</sup> \* \* \* ; and the damages, when recovered, shall be part of the personal estate of such person.

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death <sup>2</sup> \* \* \* : and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

Death of  
either party  
not to abate  
suit.  
Proviso

2. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased; Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them

<sup>1</sup> The words "and provided such action shall be brought within one year after the death of such person" were repealed by the Indian Limitation Act, 1871 (9 of 1871), Sch. I. For limitation, see now the Indian Limitation Act, 1908 (9 of 1908)

<sup>2</sup> The words "and so as such action shall be commenced within two years after the committing of the wrong" were repealed by s. 2, *ibid*. For limitation, see now the Indian Limitation Act, 1908 (9 of 1908)

ACT No. XIII of 1855.<sup>1</sup>

[27th March, 1855.]

## An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong

WHEREAS no action or suit is now maintainable in any Court against Preamble.  
a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient

<sup>1</sup> Short title, "The Indian Fatal Accidents Act, 1855." See the Indian Short Titles Act, 1897 (14 of 1897)

Based on the Fatal Accidents Act, 1846 (9 & 10 Vict., c 93)

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s 3.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s 4 (1) and Sch I, Bur Code, Vol I, in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B & O Code, Vol I, and in Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s 3, *ibid*

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely. —

Sindh . . . . .	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpáiguri . . . . .	Ditto 1881, Pt I, p. 74.
The Districts of Hazáibagh, Lohardaga (now the Ranchi District, <sup>see</sup> Calcutta Gazette, 1899, Pt I, p. 41), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbhum . . . . .	Ditto 1881, Pt. I, p. 504.
The Scheduled portion of the Mizápu District . . . . .	Ditto 1879, Pt. I, p 383.
Jaunsar Báwar . . . . .	Ditto 1879, Pt. I, p. 382.
The Scheduled Districts of the Punjab (some of these and portions of others now form the North-West Frontier Province, P & N -W. Code, Appx) . . . . .	Ditto 1881, Pt I, p. 483
The Scheduled Districts of the Central Provinces . . . . .	Ditto 1879, Pt I, p. 771
The Scheduled Districts in Ganjam and Vizagapatam . . . . .	Ditto 1898, Pt. I, p. 870.
The District of Sylhet . . . . .	Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lusháí Hills) . . . . .	Ditto 1897, Pt. I, p. 299.
The Porahat Estate in the Singhbhum District . . . . .	Ditto 1897, Pt I, p 1059

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

Kumáon and Garhwál . . . . .	See Gazette of India, 1876, Pt. I, p. 606.
The Taráí of the Province of Agra . . . . .	Ditto 1876, Pt. I, p. 505.

that the wrong-doer in such case should be answerable in damages for the injury so caused by him; It is enacted as follows:—

Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the beforementioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct

Not more than one suit to be brought.

2. Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint

Claim for loss to estate may be added

\* : Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased

Plaintiff shall deliver particulars, etc.

3. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered

Interpretation-clause.

4. The following words and expressions are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter, that is to say \* \* \* the word "person" shall apply to bodies

<sup>1</sup> The words "And it is enacted further that" were repealed by Sch II of the Repealing and Amending Act, 1914 (10 of 1914)

<sup>2</sup> The words "and that every such action shall be brought within twelve calendar months after the death of such deceased person" were repealed by the Indian Limitation Act, 1871 (9 of 1871) For limitation, see now the Indian Limitation Act, 1908 (9 of 1908)

<sup>4</sup> Certain words were repealed by Sch II of the Repealing and Amending Act, 1914 (10 of 1914)



1855: Act XXIII.] *Administration of Mortgaged Estates.*

politic and corporate; and the word "parent" shall include father and mother<sup>1</sup> and grand-father and grand-mother; and the word "child" shall include son and daughter and grand-son and grand-daughter and step-son and step-daughter.

ACT No. XXIII OF 1855.<sup>2</sup>

[13th August, 1855.]

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage.

WHEREAS it is expedient that the law, under which the real and per- Preamble.

<sup>1</sup> Step-father and step-mother are designedly omitted

<sup>2</sup> Short title, "The Mortgaged Estates Administration Act, 1855." See the Indian Short Titles Act, 1897 (14 of 1897).

Based on the Real Estate Charges Act, 1851 (17 & 18 Vict., c. 113). Repealed, except as to descents or devises occurring or made before 1st January, 1860, by the Repealing Act, 1868 (8 of 1868).

This Act has been declared, as regards such descents and devises, to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1871 (11 of 1871), to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri . . . . . See Gazette of India, 1881, Pt. I, p. 74.

The Districts of Hazáribágh, Lohardága (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Paigana Dhalbhum and the Kolhan in the District of Singhbhum .

Ditto 1881, Pt. I, p. 504

The Scheduled portion of the Muzápu District .

Ditto 1879, Pt. I, p. 383

Jamsar Bawar .

Ditto 1879, Pt. I, p. 392

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Ghazi Khán [Portions of the Districts of Harara, Bannu, Dera Ismail Khán and Dera Ghazi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code] .

Ditto 1886, Pt. I, p. 48.

The Scheduled Districts in Ganjam and Vizagapatam .

Ditto 1898, Pt. I, p. 870.

The District of Sylhet .

Ditto 1879, Pt. I, p. 681.

The rest of Assam (except the North Lusháí Hills) .

Ditto 1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India, 1886, Pt. I, p. 301

sonal assets of deceased persons subject to the English law are administered, should be amended; It is enacted as follows:—

Heir or devisee of land not to claim payment of mortgage out of personalty.

1. \* \* \* \* \* If any person shall die seised of, or entitled to, any estate or interest in any land or other hereditaments within the territories in the possession of, and under the Government of, the East India Company, which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage-debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage-debts, with which the same shall be charged, every part thereof, according to its value bearing a proportionate part of the mortgage-debts charged on the whole thereof:

Proviso as to right of mortgagee to satisfaction, from personal assets.

Provided always that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage-debt, either out of the personal estate of the person so dying as aforesaid or otherwise:

Proviso as to claims made prior to this Act.

Provided also that nothing herein contained shall affect the rights of any person claiming under, or by virtue of any will, deed or document already made, or to be made, before this Act shall have come into operation.

## ACT No. XXIV OF 1855.<sup>2</sup>

[13th August, 1855]

An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts \* \* \* \* \*

Preamble.

WHEREAS, by reason of the difficulty of providing a place to which

<sup>1</sup> The words "After this Act shall have come into operation" were repealed by the Repealing Act, 1874 (16 of 1874)

<sup>2</sup> Short title, "The Penal Servitude Act, 1855" See the Indian Short Titles Act, 1897 (14 of 1897)

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3

It has been declared in force in—

British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal Code,

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 6, Bur Code, Vol. I

Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms it has become expedient to substitute other punishments for that of transportation <sup>1</sup> \* \* \* ; It is enacted as follows:—

1. <sup>2</sup> \* \* \* No European or American shall be liable to be sentenced, or ordered, by any Court within the territories <sup>3</sup> \* \* \* under the Government of <sup>2</sup> \* India <sup>2</sup> \* , to be transported.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely.—

Sindh . . . . .	See Gazette of India, 1880, Pt. I, p. 672.
Adon . . . . .	Ditto 1870, Pt. I, p. 434.
West Jalpáiguri and the Western Duáls . . . . .	Ditto 1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardága (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Paugana Dhálbhum, and the Kolhán in the District of Singbhum . . . . .	Ditto 1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . . . .	Ditto 1879, Pt. I, p. 383.
Jáunsaú Báwar . . . . .	Ditto 1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwari, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. [Portions of the Districts of Hazára, Bannu, Dera Ismail Khán, Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and <i>ibid</i> , 1903, Pt. I, p. 575, but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (3 of 1900), Punjab and N-W Code] . . . . .	Ditto 1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces . . . . .	Ditto 1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam . . . . .	Ditto 1898, Pt. I, p. 870.
The District of Sylhet . . . . .	Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lusháí Hill-) . . . . .	Ditto 1897, Pt. I, p. 209.
The Porahat Estate in the Singbhum District . . . . .	Ditto 1897, Pt. I, p. 1069.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India, 1886, Pt. I, p. 301.

<sup>1</sup> The words "and to amend the law relating to the removal of such convicts" in the title and the words "and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment," in the Preamble were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

<sup>2</sup> The words "After the commencement of this Act" and the words "the East" and "Company" were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>3</sup> The words "in the possession and" were repealed by the Repealing Act, 1876 (12 of 1876).

No European or American to be sentenced to transportation.

Terms of  
penal servi-  
tude instead  
of the present  
terms of  
transporta-  
tion.

2. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as herein after mentioned

The terms of penal servitude to be awarded by any sentence or order instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows: (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years .

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years

Instead of transportation for the term of life, penal servitude for the term of life

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation

Discretion of  
Courts as to  
alternative  
punishments.

3. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation, but, where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act

Effect of pardon  
granted  
upon condi-  
tion of penal  
servitude.

4. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5. [*Power to substitute penal servitude for transportation*] *Rep by the Prisoners Act, 1871 (V of 1871)*

1855: Act XXVIII.] *Repeal of Usury Laws*

6. [*Mode of dealing with person under sentence of penal servitude.*] Rep by the Prisoners Act, 1871 (V of 1871).

7. [*Application of enactments respecting transportation and imprisonment with hard labour.*] Rep by the Prisoners Act, 1871 (V of 1871)

8. [*Removal of convicts under sentence of imprisonment from one prison to another*] Rep by the Presidency Jails Act, 1867 (XII of 1867), and the Repealing and Amending Act, 1914 (10 of 1914).

9, 10, 11 & 12. [*Licenses to convicts under sentence of penal servitude to be at large*] Rep by the Prisoners Act, 1871 (V of 1871).

13. Nothing in this Act is intended to alter or affect the provisions of the 12 & 13 Victoria, Chapter 43,<sup>1</sup> or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August, 1833, or which may hereafter be passed.

Act not to affect the provisions of certain English Statutes.

14. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

Sentence when proof that a person is a European or an American.

15. The word "European," as used in this Act, shall be understood to include any person usually designated a "European British subject"

Interpretation-clause.

16. [*Commencement of Act.*] Rep. by the Repealing Act, 1870 (XIV of 1870)

### ACT No XXVIII OF 1855.<sup>1</sup>

[19th September, 1855]

## An Act for the repeal of the Usury Laws.

WHEREAS it is expedient to repeal the laws now in force relating to Usury, It is enacted as follows —

1. [*Repeal of enactments.*] Rep. by the Repealing Act, 1870 (XIV of 1870)

2. In any suit in which interest is recoverable, the amount shall be Rate of

<sup>1</sup> "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of effects of officers and soldiers dying in the service" Rep by 20 & 21 Viet., c. 66 (Mutiny, East India).

<sup>2</sup> See definition of European British subject in s. 4, cls (b) and (i) of the Code of Criminal Procedure, 1898 (Act V of 1898)

<sup>3</sup> The last part of this section was repealed by Sch. II of the Repealing and Amending Act, 1914 (10 of 1914)

<sup>4</sup> Short title, "The Usury Laws Repeal Act, 1855" See the Indian Short Titles Act, 1897 (11 of 1897)

<sup>5</sup> This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3

interest to be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and, if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

Rate of interest upon a judgment or decree.

3. Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

Sindh	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpāiguri, the Western Dvārs, the Western Hills of Dājiling, the Dārjiling Taluk and the Damson Sub-division of the Dājiling District	Ditto 1881, Pt. I, p. 74
The District of Hazāribāgh	Ditto 1881, Pt. I, p. 507
The District of Lohāidaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44)	Ditto 1881, Pt. I, p. 508
The District of Mānbhum	Ditto 1881, Pt. I, p. 509
Paigana Dhālbbhum in the District of Singhbhum	Ditto 1881, Pt. I, p. 510
The Scheduled portion of the Mizāpuri District	Ditto 1879, Pt. I, p. 383
Jaunsai Bāwar	Ditto 1879, Pt. I, p. 382
The Districts of Hazāra, Peshāwar, Kohāt, Bannu, Deira Ismail Khān and Deira Ghāzi Khān [Portions of the Districts of Hazāra, Bannu, Deira Ismail Khān and Deira Ghāzi Khān and the Districts of Peshāwar and Kohāt now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application to that part of the Hazara District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (3 of 1900), Punjab and N.-W. Code]	Ditto 1886, Pt. I, p. 45
The District of Lahaul	Ditto 1886, Pt. I, p. 301
The Scheduled Districts of the Central Provinces	Ditto 1879, Pt. I, p. 741
The Scheduled Districts in Ganjam and Vizagapatam	Ditto 1898, Pt. I, p. 870
The District of Sylhet	Ditto 1879, Pt. I, p. 631
The Districts of Kāunpur, Nain-gong, Darang, Sibsārai, Lakhimpur, Goalpāra (excluding the Eastern Dvārs) and Cachar (excluding the North Cachar Hills)	Ditto 1878, Pt. I, p. 533

It has been extended, under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

Kumāon and Garhwāl	See Gazette of India, 1876, Pt. I, p. 606
The Taluk of the Province of Agra	Ditto 1876, Pt. I, p. 505.

4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Contracts for usufruct of property in lieu of interest.

5. Whenever, under the Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve per centum per annum: Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

Amount of interest to be deposited in certain cases of conditional sales under Bengal Regulations.

Proviso.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

Rate of interest on future adjustments of accounts.

7. [*Saving of prior transactions*] *Rep. by the Repealing Act, 1870 (XIV of 1870)*

8. [*Commencement of Act.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

#### SCHEDULE OF REPEALED ENACTMENTS.

[*Rep. by the Repealing Act, 1870 (XIV of 1870).*]

ACT No IX of 1856.<sup>2</sup>

[*11th April, 1856.*]

#### An Act to amend the Law relating to Bills of Lading.

WITREAS by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner,

Preamble.

<sup>1</sup> See Bengal Reg 1 of 1798, s. 2. This Regulation is, however, now in force only in the Santhál Parganas and with the exception of the parts which relate to interest, the Regulation is also in force in the Punjab.

<sup>2</sup> Short title, "The Indian Bills of Lading Act, 1856." See the Indian Short Titles Act, 1897 (14 of 1897).

Act 9 of 1856 is based on the Bills of Lading Act, 1855 (18 & 19 Vict., c. 111).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

and it is expedient that such rights should pass with the property; And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid; It is enacted as follows:—

Rights under bills of lading to vest in consignee or endorsee.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself

Not to affect right of stoppage *in transitu* or claims for freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*,<sup>1</sup> or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement

Bill of lading in hands of consignee, etc., conclusive evidence of the shipment as against master, etc.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board:

Proviso

Provided that the master or other person so signing may exonerate himself, in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

Sindh	. . . . .	See Gazette of India, 1880, Pt I, p 672.
West Jalpáiguri	. . . . .	Ditto 1881, Pt I, p 74
The Districts of Hazáribágh, Loháridaga (now the Ranchi District, <sup>see</sup> Calcutta Gazette, 1899, Pt I, p 44), and Mámbhum, and Paigana Dhálbhum and the Kolhán in the District of Singbhum	. . . . .	Ditto 1881, Pt I, p 504
The District of Sylhet	. . . . .	Ditto 1879, Pt. I, p 631.
The rest of Assam (except the North Lusháí Hills)	. . . . .	Ditto 1897, Pt. I, p 299.

<sup>1</sup> As to stoppage in transit, see the Indian Contract Act, 1872 (9 of 1872), ss 99-106.



ACT No. XI of 1856.<sup>1</sup>

[11th April, 1856.]

An Act for the better prevention of desertion by European Soldiers <sup>2</sup>[and Airmen] from the Land <sup>2</sup>[and Air] Forces of Her Majesty <sup>3</sup>\* \* \* in India.

WHEREAS it is expedient to make better provision for apprehending <sup>Preamble</sup> and detaining European deserters from the Land <sup>2</sup>[and Air] Forces in the

<sup>1</sup> Short title, "The European Deserters Act, 1856" See the Indian Short Titles Act, 1897 (11 of 1897)

This Act has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3;

the Santhāl Pargannas, by the Santhāl Pargannas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhāl Pargannas Justice and Laws Regulation, 1899 (3 of 1899), B & O Code, Vol. 1

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (11 of 1874), to be in force in the following Scheduled Districts, namely—

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672

Aden . . . . . Ditto 1879, Pt. I, p. 431.

West Jalandhar . . . . . Ditto 1881, Pt. I, p. 71.

The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhūm, and Pargana Dhálbhūm and the Kolhán in the District of Singhbhum . . . . . Ditto 1881, Pt. I, p. 504.

The Scheduled portion of the Muzapuri District . . . . . Ditto 1879, Pt. I, p. 383.

Jaunsar Bāwari . . . . . Ditto 1879, Pt. I, p. 382.

The Districts of Hazáira, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán [*Portions of the Districts of Hazáira, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575, but its application to that part of the Hazara District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*] . . . . . Ditto 1886, Pt. I, p. 48

The Scheduled Districts of the Central Provinces . . . . . Ditto 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjām and Vizagapatam . . . . . Ditto 1898, Pt. I, p. 870.

The District of Sylhet . . . . . Ditto 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushá Hills) . . . . . Ditto 1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India, 1886, Pt. I, p. 301

It has been extended, by notification under s. 5 of the same Act, to the Scheduled Districts of Kumáon and Garhwal. See Gazette of India, 1876, Pt. I, p. 606

<sup>2</sup> Those words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927)

<sup>3</sup> The words "and of the East India Company" were repealed by the Repealing Act, 1870 (14 of 1870).

service of Her Majesty <sup>1</sup>\* \* \* in India, and for punishing persons who aid and encourage such deserters; It is enacted as follows:—

Penalty on master in certain cases if a deserter be concealed on board his ship.

1. If it shall appear that any officer, <sup>2</sup>[soldier or airman], being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees:

Proviso

Charge may be in the alternative.

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

Jurisdiction

2. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-towns of Calcutta, Madras and Bombay, <sup>3</sup>\* \* \* Magistrate, <sup>4</sup>\* \* \* or person lawfully exercising the powers of a Magistrate in any port within the territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction

Conviction to be quashed on merits only. Form of conviction, etc.

3. No conviction, order or judgment of any Justice of the Peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order or judgment the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order or judgment, in obedience to any writ of *certiorari*; and, if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in such depositions

Saving of proceedings under other Acts.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate or other officer having authority in that behalf from committing for trial any person who shall be charged with an offence

<sup>1</sup> The words "and of the East India Company" were repealed by the Repealing Act, 1870 (14 of 1870)

<sup>2</sup> These words were substituted for the words "or soldier" by s 2 and Sch I of the Repealing and Amending Act, 1927 (10 of 1927)

<sup>3</sup> The words "or for any of the Settlements of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing Act, 1874 (16 of 1874)

<sup>4</sup> The words "Joint Magistrate" were repealed by the Repealing Act, 1873 (12 of 1873).

punishable under <sup>1</sup> \* \* any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act: Provided that no proceedings shall have been had against such person in respect of the same offence under this Act. Proviso.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment or detachment, at any port or place within the territories of the East India Company in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer; Commanding Officer or Magistrate may issue warrants for apprehension of deserters.

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate <sup>2</sup> \* or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place, there shall appear reason to suspect that any European officer, <sup>3</sup>[soldier or airman] belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such commanding officer or Justice of the Peace, Magistrate <sup>2</sup> \* or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed to enter into and search, at any time of the day or night, any such ship, vessel or boat, or any house or place on shore, and to apprehend any such officer, <sup>3</sup>[soldier or airman], and to detain him in custody in order to his being dealt with according to law.

6. The warrant to be issued under the preceding section may be addressed to any European officer, <sup>3</sup>[soldier or airman] of the said Forces or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate <sup>2</sup> \* or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform and obey such warrant <sup>4</sup> Warrant to whom to be addressed and by whom to be executed.

7. Every person who shall be apprehended under any warrant under the fifth section of this Act shall be brought without delay before a Justice of the Peace, Magistrate <sup>2</sup> \* or person lawfully exercising the powers of a Magistrate, in or near the place whereon such person shall have been arrested, who shall examine such person, and if he shall be satisfied, either by the confession of such person or the testimony Person apprehended how to be dealt with, etc.

<sup>1</sup> The words and figures "Act No. 14 of 1849, or," were repealed by the Repealing Act, 1874 (16 of 1874)

<sup>2</sup> The words "Joint Magistrate" were repealed by the Repealing Act, 1873 (12 of 1873)

<sup>3</sup> These words were substituted for the words "or soldier" by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927)

<sup>4</sup> Under Code of Criminal Procedure, 1898, s. 54, cl. 6, a police-officer may now, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of being a deserter from Her Majesty's Army. See Act 5 of 1898

of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest <sup>1</sup>[military or air-force station, as the case may be], in order that he may be dealt with according to law

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ACT No XV OF 1856 <sup>2</sup>

[25th July, 1856]

An Act to remove all legal obstacles to the marriage of Hindu Widows.

**Preamble.** WHEREAS it is known that, by the law as administered in the Civil

<sup>1</sup> These words were substituted for the words "military station" by s 2 and Sch I of the Repealing and Amending Act, 1927 (10 of 1927)

<sup>2</sup> Short title, "The Hindu Widows' Re-marriage Act, 1856" See the Indian Short Titles Act, 1897 (14 of 1897)

This Act has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (14 of 1874), s 3,

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B & O Code, Vol I,

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), B & O. Code, Vol I

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (11 of 1874), to be in force in the following Scheduled Districts, namely —

Sindh . . . . . See Gazette of India, 1880, Pt 1, p 672

West Jalpāngur . . . . . Ditto 1881, Pt 1, p. 74

The Districts of Hazāibāgh, Lohāidāga (now the Ranchi District, see Calcutta Gazette, 1899, Pt 1, p 44), and Mānbhum, and Pargana Dhālbum and the Kolhān in the District of Singhbhum

Ditto 1881, Pt 1, p 504

Kumāon and Garhwal . . . . . Ditto 1876, Pt 1, p 605

The Scheduled portion of the Muzāpur District . . . . . Ditto 1879, Pt 1, p 333.

Jaunsaī Bānui . . . . . Ditto 1879, Pt 1, p. 382

The Districts of Hazāra, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān [Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshawar and Kohāt now form the North-West Frontier Province, see Gazette of India, 1901, Pt 1, p 857, and ibid, 1902, Pt. I, p 575, but its application to that part of the Hazāra District known as Upper Tanawal has been barred by the Hazāra (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N-W Code]

Ditto 1886, Pt. 1, p 48

Courts established in the territories in the possession and under the Government of the East India Company, Hindu widows with certain exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property;

and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience;

and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare, It is enacted as follows:—

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

Marriage of  
Hindu wid-  
ows legalized.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to

Rights of  
widow in de-  
ceased hus-  
band's  
property to  
cease on her  
re-marriage.

The District of Lahaul . . .	See Gazette of India, 1886, Pt 1, p 301.
The Scheduled Districts of the Central Provinces . . .	Ditto 1879, Pt I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam . .	Ditto 1898, Pt I, p 870
Coorg . . . . .	Ditto 1878, Pt 1, p 747
The District of Sylhet . . .	Ditto 1879, Pt 1, p. 631
The Districts of Kámrup, Nagaong, Darrang, Sibságar, Lakhimpur, Goalpára (excluding the Eastern Dyáns) and Cachar (excluding the North Cachar Hills) . . .	Ditto 1878, Pt 1, p 533.
The Gáto Hills, the Khási and Jaintia Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Dyáns in the Goalpára District . . .	Ditto 1897, Pt I, p. 299
The Ponahal Estate in the Singbhum District . . .	Ditto 1897, Pt 1, p 1059

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

The Taná District of the Province of Agia . . .	See Gazette of India, 1876, Pt I, p. 505
The Andaman and Nicobar Islands . . . . .	Ditto 1882, Pt. I, p. 148.

re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same

Guardianship  
of children of  
deceased hus-  
band on the  
re-marriage  
of his widow

3. On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors

Nothing in  
this Act to  
render any  
childless  
widow cap-  
able of in-  
heriting.

4. Nothing in this Act contained shall be construed to render any widow who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

Saving of  
rights of  
widow mar-  
rying, except  
as provided  
in sections 2  
to 4.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled, and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage

Ceremonies  
constituting  
valid mar-  
riage to have  
same effect  
on widow's  
marriage.

6. Whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow; and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.

7. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or failing also brothers, of her next male relative.

Consent to re-marriage of minor widow.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine or to both.

Punishment for abetting marriage made contrary to this section.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law: Provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Effect of such marriage. Proviso.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

Consent to re-marriage of major widow.

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ACT No. II OF 1857.<sup>1</sup>

[24th January, 1857.]

An Act to establish and incorporate an University at Calcutta.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort William in Bengal and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Calcutta for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by Academical Degrees<sup>2</sup> as evidence of their respective attainments, and marks of honour proportioned thereunto, and whereas, for effectuating the purposes aforesaid,

Preamble.

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<sup>1</sup> Short title, "The Calcutta University Act, 1857" See the Indian Short Titles Act, 1897 (11 of 1897)

<sup>2</sup> For powers conferring Degrees, see the Indian Universities Act, 1904 (8 of 1904).

it is expedient that such University should be incorporated; It is enacted as follows <sup>1</sup>\* \* \* \* :—

tion. a - The following persons, namely,—

The Right Honourable CHARLES JOHN VISCOUNT CANNING,  
Governor General of India,

The Honourable JOHN RUSSELL COLVIN,  
Lieutenant-Governor of the North-Western Provinces,

The Honourable FREDERICK JAMES HALLIDAY,  
Lieutenant-Governor of Bengal,

The Honourable SIR JAMES WILLIAM COLVILLE, Knight,  
Chief Justice of the Supreme Court of Judicature in Bengal,

The Right Reverend DANIEL WILSON,  
Doctor of Divinity, Bishop of Calcutta,

The Honourable GEORGE ANSON, General,  
Commander-in-Chief of the Forces in India,

The Honourable JOSEPH ALEXANDER DORIN,  
Member of the Supreme Council of India,

The Honourable JOHN LOW, Major-General,  
Companion of the Most Honourable Order of the Bath, Member of the  
Supreme Council of India,

The Honourable JOHN PETER GRANT,  
Member of the Supreme Council of India,

The Honourable BARNES PEACOCK,  
Member of the Supreme Council of India,

CHARLES ALTON, Esquire,  
Member of the Legislative Council of India,

HENRY RICKETTS, Esquire,  
Provisional Member of the Supreme Council of India,

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<sup>1</sup> The words and parentheses " (that is to say) " were repealed by the Repealing Act, 1876 (12 of 1876)



CHARLES BINNY TREVOR, Esquire,  
Judge of the Sudder Court in Bengal,

Prince GHOLAM MUHAMMUD,

WILLIAM RITCHIE, Esquire,  
Advocate-General in Bengal,

CECIL BEADON, Esquire,  
Secretary to the Government of India,

Colonel HENRY GOODWYN, of the Bengal Engineers,  
Chief Engineer in Bengal,

WILLIAM GORDON YOUNG, Esquire,  
Director of Public Instruction in Bengal,

Lieutenant-Colonel WILLIAM ERSKINE BAKER, of the Bengal Engineers,  
Secretary to the Government of India,

Lieutenant-Colonel ANDREW SCOTT WAUGH, of the Bengal Engineers,  
Surveyor-General of India,

KENNETH MACKINNON, Esquire,  
Doctor in Medicine,

HODGSON PRATT, Esquire,  
Inspector of Schools in Bengal,

HENRY WALKER, Esquire,  
Professor of Anatomy and Physiology in the Medical College of Bengal,

THOMAS THOMSON, Esquire,  
Doctor in Medicine, Superintendent of the Botanical Garden at Calcutta,

FREDERICK JOHN MOUTAT, Esquire,  
Doctor in Medicine, and Fellow of the Royal College of Surgeons,

Lieutenant WILLIAM NASSAU LEES, of the Bengal Infantry,

The Reverend WILLIAM KAY,  
Doctor of Divinity, Principal of Bishop's College,

The Reverend ALEXANDER DUFF,  
Doctor of Divinity,

THOMAS OLDHAM, Esquire,  
Superintendent of the Geological Survey of India,

HENRY WOODROW, Esquire,  
Inspector of Schools in Bengal,

LEONIDAS CLINT, Esquire,  
Principal of the Presidency College,

PROSONNO COOMAR TAGORE,  
Clerk Assistant of the Legislative Council of India,

RAMAPERSHAD ROY, Government Pleader in the Sudder Court of Bengal,

The Reverend JAMES OGILVIE, Master of Arts,

The Reverend JOSEPH MULLENS, Bachelor of Arts,

MOJAVY MUHAMMAD WUJEEH, Principal of the Calcutta Mudrasah,

ISHWAR CHUNDER BIDYA SAGUR,  
Principal of the Sanskrit College of Calcutta,

RAMGOPAL GHOSE,  
Formerly Member of the Council of Education,

ALEXANDER GRANT, Esquire,  
Apothecary to the East India Company,

HENRY STEWART REID, Esquire,  
Director of Public Instruction in the North-Western Provinces,

being the first Chancellor, Vice-Chancellor and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor or Fellows, are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Calcutta;

and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every

Court of Justice within the territories <sup>1\*</sup> \* \* \* under the Government of <sup>1\*</sup> \* India <sup>1\*</sup>.

2. The <sup>2\*</sup> Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immovable, which may become vested in it for the purposes of the <sup>2\*</sup> \* University by virtue of any purchase, grant, testamentary disposition or otherwise; and shall be able and capable in law to grant, demise, alien or otherwise dispose of all or any of the property, moveable or immovable, belonging to the <sup>2\*</sup> \* University; and also to do all other matters incidental or appertaining to a Body Corporate. Power to hold and dispose of property.

3. <sup>2\*</sup> \* \* \* \* \* If any person, being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant. Office of Chancellor, etc., vacated by leaving India

4. The <sup>1</sup> [Governor of the Presidency of Fort William in Bengal] for the time being shall be the Chancellor of the said University <sup>4</sup> \* \* \* \* Chancellor.

5. <sup>4\*</sup> \* \* \* \* \* The office of Vice-Chancellor shall be held for two years only; <sup>5\*</sup> \* \* \* \* \* Vice-Chancellor.

Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time or otherwise, the <sup>6</sup> [Local Government of Bengal] shall, by notification <sup>7\*</sup> \* \* \* \*, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy:

Provided that, on any vacancy in the said office which shall occur by effluxion of time, the <sup>6</sup> [Local Government of Bengal] shall have power to re-appoint <sup>5</sup> \* \* \* \* \* any future Vice-Chancellor to such office.

<sup>1</sup> The words "in the possession and" and "the East" and the word "Company" were repealed by the Repealing and Amending Act, 1891 (12 of 1891)

<sup>2</sup> The word "said" wherever it occurred in s. 2 and the words "The said Body Corporate shall consist of one Chancellor, one Vice-Chancellor, and such number of ex-officio and other Fellows as the Governor General of India in Council hath already appointed, or shall from time to time, by any order published in the Calcutta Gazette, hereafter appoint, and the Chancellor, Vice-Chancellor and Fellows for the time being shall constitute the Senate of the said University" Provided that" in s. 3 were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904)

<sup>3</sup> These words were substituted for the words "Governor General of India" by s. 2 of the Calcutta University Act, 1921 (7 of 1921).

<sup>4</sup> The words "and the first Chancellor shall be the Right Honourable Charles John Viscount Canning" in s. 4 and the words "The first Vice-Chancellor of the said University shall be Sir James William Colville, Knight" in s. 5 were repealed by the Repealing Act, 1876 (12 of 1876)

<sup>5</sup> The words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January, 1859" in the first paragraph of s. 5, and the words "the Vice-Chancellor hereinbefore nominated or" in the proviso were repealed by *ibid*

<sup>6</sup> These words were substituted for the words "Governor General of India in Council" by s. 3 of the Calcutta University Act, 1921 (7 of 1921).

<sup>7</sup> The words "in the Calcutta Gazette" were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904).



ACT No XXII OF 1857 <sup>1</sup>

[18th July, 1857]

An Act to establish and incorporate an University at Bombay.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Bombay and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Bombay for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of literature, science and art, and of rewarding them by academical degrees<sup>2</sup> as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated, It is enacted as follows:<sup>3</sup> <sup>4</sup> <sup>5</sup> <sup>6</sup> Preamble.

The following persons, namely,—

Incorporation.

The Right Honourable JOHN, LORD ELPHINSTONE,  
Governor of Bombay,

The Honourable SIR WILLIAM YARDELEY, Knight,  
Chief Justice of the Supreme Court of Judicature at Bombay,

The Right Reverend JOHN HARDING,  
Doctor of Divinity, Bishop of Bombay, *ex officio*,

The Honourable SIR HENRY SOMERSET, Lieutenant-General,  
Knight Companion of the Most Honourable Order of the Bath,  
Commander-in-Chief of the Forces in Bombay, *ex officio*,

The Honourable JAMES GRANT LUMSDEN,  
Member of the Council of Bombay, *ex officio*,

The Honourable ARTHUR MALET,  
Member of the Council of Bombay, *ex officio*,

<sup>1</sup> Short title, "The Bombay University Act, 1857" See the Indian Short Titles Act, 1897 (11 of 1897)

<sup>2</sup> For powers conferring Degrees, see the Indian Universities Act, 1904 (8 of 1904)

<sup>3</sup> The words and parentheses "(that is to say)" in the preamble were repealed by the Repealing Act, 1876 (12 of 1876)

EDWARD IRVINE HOWARD, Esquire,  
Director of Public Instruction, *ex officio*,

ROBERT PLAINES, Esquire, M.D.,  
Acting Educational Inspector, Presidency Division, *ex officio*,

C MOREHEAD, Esquire, M.D.,  
Principal of the Grant Medical College, *ex officio*,

JOHN HARKNESS, Esquire, LL.D.,  
Principal of the Elphinstone College, *ex officio*,

The Reverend JAMES McDUGALL,  
Acting Principal of the Poona College, *ex officio*,

PHILIP WILLIAM LEGEY, Esquire,  
Member of the Legislative Council of India,

The Honourable SIR MATTHEW RICHARD SAUSSE, Knight,  
Puisne Judge of the Supreme Court of Judicature at Bombay

SIR JAMSETJI JEEJEBHOY, Knight,

METCALFE LARKEN, Esquire,  
Judge of the Sudder Court in Bombay, and President  
of the late Board of Education,

JUGGONATH SUNKERSSETT, Esquire,  
Member of the late Board of Education.

BOMANJEE HORMUSJEE, Esquire,  
Member of the late Board of Education,

BHAO DAJEE, Esquire,  
Graduate of the Grant Medical College,  
Member of the late Board of Education.

MATTHEW STOVELL, Esquire,  
Surgeon in the Bombay Army,  
Secretary to the late Board of Education,

CLAUDIUS JAMES ERSKINE, Esquire,  
Civil Service, late Director of Public Instruction,

WILLIAM EDWARD FRERE, Esquire,  
Member of the Royal Asiatic Society, and  
President of the Bombay Branch of the Royal Asiatic Society,  
Judge of the Sudder Court in Bombay,

Major-General CHARLES WADDINGTON,  
Companion of the Most Honourable Order of the Bath,  
Chief Engineer of Public Works,

The Reverend JOHN WILSON,  
Doctor of Divinity, Fellow of the Royal Society,  
Honorary President of the Bombay Branch of the Royal Asiatic Society,

The Reverend PHILIP ANDERSON, Master of Arts,  
Chaplain on the Bombay Establishment,

HENRY BARTLE EDWARD FRERE, Esquire,  
Commissioner in Sindh,

Lieutenant EDWARD FREDERICK TIERNEY FERGUSON, Indian Navy,

MATOMED YUSOOF MOORGAY, Kazi of Bombay,

JAMES JOHN BERKLEY, Esquire,  
Fellow of the Geographical Society, M.I.C.E.,

President of the Bombay Mechanics Institution, and  
Chief Resident Engineer of the Great Indian Peninsular Railway  
Company,

HENRY LACON ANDERSON, Esquire,  
Secretary to Government,

being the first Chancellor, Vice-Chancellor and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor or

Fellows, are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Bombay;

and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories <sup>1</sup> under the Government of <sup>1</sup> India <sup>1</sup>.

Power to hold and dispose of property.

2. The <sup>2</sup> Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immoveable, which may become vested in it for the purposes of the <sup>2</sup> University by virtue of any purchase, grant, testamentary disposition or otherwise, and shall be able and capable in law to grant, demise, alien or otherwise dispose of all or any of the property, moveable or immoveable, belonging to the <sup>2</sup> University, and also to do all other matters incidental or appertaining to a Body Corporate

3. [Constitution of Body Corporate] Rep by s 29, Indian Universities Act, 1904 (8 of 1904)

Office of Chancellor, etc, vacated by leaving India.  
Chancellor.

<sup>2</sup> If any person being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant

4. The Governor of Bombay for the time being shall be the Chancellor of the said University <sup>1</sup> \* <sup>1</sup> <sup>1</sup> <sup>1</sup>.

Vice-Chancellor.

5. <sup>3</sup> The Office of Vice-Chancellor shall be held for two years only; <sup>1</sup> \* <sup>1</sup> <sup>1</sup> <sup>1</sup>

Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time or otherwise, the Governor of Bombay in Council shall, by notification in the Bombay Gazette, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy.

Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor of Bombay in Council shall have power to re-appoint <sup>1</sup> any future Vice-Chancellor, to such office

<sup>1</sup> The words "in the possession and" and "the East" and the word "Company" were repealed by the Repealing and Amending Act, 1891 (12 of 1891)

<sup>2</sup> The word "said" wherever it occurred in s 2 and the words "Provided that" in s 3, were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904)

<sup>3</sup> The words "and the first Chancellor shall be the Right Honourable John, Lord Elphinstone" in s 4, and the words "The first Vice-Chancellor of the said University shall be Sir William Yardley, Knight," in s 5 were repealed by the Repealing Act, 1876 (12 of 1876), s 1

<sup>4</sup> The words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January, 1859" in s 5 and "the Vice-Chancellor hereinbefore nominated or" in the proviso were repealed by *ibid*



6. [Fellows] Rep by s 29 of the Indian Universities Act, 1904 (8 of 1904)

7. The Governor of Bombay in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University and, as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow. the appointment of a Fellow may be cancelled.

8. The Chancellor, Vice-Chancellor and Fellows for the time being shall have the entire management of and superintendence over the affairs, concerns and property of the said University, and, in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University. Chancellor, Vice-Chancellor and Fellows to superintend the affairs of the University.

1        \*        \*        \*        \*        \*

9. [Meetings of the Senate] Rep by s 29, Indian Universities Act, 1904 (8 of 1904).

10. [Appointment and removal of Examiners and Officers] Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).

11. [Power to confer degrees] Rep by s 29, Indian Universities Act, 1904 (8 of 1904)

12. [Qualification for admission of candidates for degrees] Rep by s. 29, Indian Universities Act, 1904 (8 of 1904).

13. [Examination for degrees] Rep. by s 29, Indian Universities Act, 1904 (8 of 1904)

14. [Grant of degrees] Rep by s 29, Indian Universities Act, 1904 (8 of 1904).

15. The said Chancellor, Vice-Chancellor and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Bombay in Council, shall from time to time see fit to impose. Fees

Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor of Bombay in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Bombay in Council may direct. Annual accounts.

<sup>1</sup> The last two paragraphs and the proviso to s 8 relating to Bye-laws were repealed by s 29 of the Indian Universities Act, 1904 (8 of 1904)

ACT No III of 1858 <sup>1</sup>

[23rd January, 1858]

## An Act to amend the Law relating to the arrest and detention of State Prisoners

Preamble

WHEREAS doubts have been entertained whether State prisoners confined under Regulation II, 1819, of the Madras Code, or Regulation of 1819

<sup>1</sup> Short title "The State Prisoners Act, 1858" See the Indian Short Titles Act, 1897 (14 of 1897)

Persons detained under this Act or under the Bengal State Prisoners Regulation, 1818 (3 of 1818), Ben Code, Madras Regulation 2 of 1819, Mad Code, Bombay Regulation 25 of 1827, Bom Code, or under the State Prisoners Act, 1850 (34 of 1850), *supra*, are not affected by s 491 of the Code of Criminal Procedure, 1898 (Act 5 of 1898)—see last clause of s 491 of the Code

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s 3 of the Laws Local Extent Act, 1874 (15 of 1874)

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B & O Code, Vol I in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), Ben. Code Vol I, and in the Pargana of Manipal by the Manipal Laws Regulation, 1926 (II of 1926), s 2

Section 5 has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s 4 (7), Bur Code, Vol. I, in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s 3, B & O Code, Vol. I, in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s 3, Bal Code

The Act has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely—

Sindh . . . . .	See Gazette of India, 1880, Pt I, p 672
Aden . . . . .	Ditto 1879, Pt. I, p 431

West Jalpáiguri and the Western Duárs . . . . .	Ditto 1881, Pt I, p. 71
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The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, <i>see</i> Calcutta, Gazette, 1899, Pt I, p 44 and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum . . . . .	Ditto 1881, Pt I, p 504
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The Scheduled portion of the Mirzápur District . . . . .	Ditto 1879, Pt I, p 383
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Jaunsar Báwar . . . . .	Ditto 1879, Pt I, p 382
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The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán [Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohat, now form the North-West Frontier Province, *see* Gazette of India, 1901, Pt I, p 857, and *ibid*, 1902, Pt I, p. 575, but its application has been barred to that portion of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900, s 3), Punjab and N-IV Code] See Gazette of India, 1886, Pt I, p 48

The District of Lahaul . . . . .	See Gazette of India, 1886, Pt I, p 301
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The Scheduled Districts of the Central Provinces . . . . .	Ditto 1879, Pt I, p 771
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The District of Sylhet . . . . .	Ditto 1879, Pt I, p 631
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Bom Reg.  
XXV of  
1827

Bom Reg III  
of 1818

XXV, 1827, of the Bombay Code, can be lawfully detained in any fortress, jail or other place within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay, respectively; and it is expedient that such doubts be removed, and that the powers of the said Regulations and of Regulation III, 1818, of the Bengal Code be extended, It is enacted as follows —

1. [*Repeal of part of section 1, clause first of Bombay Regulation XXV of 1827.*] *Rep by the Repealing Act, 1870 (XIV of 1870).*

2. The provisions of Regulation III, 1818, of the Bengal Code, Regulation II, 1819, of the Madras Code, and Regulation XXV, 1827, of the Bombay Code as altered by section 1 of this Act, relating to the arrest and confinement of persons as State prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras and Bombay, respectively.

Regulations as to arrest and confinement of State Prisoners in force within Presidency-towns.

3. All powers for the better custody of State prisoners which by virtue of Act XXXIV of 1850 are vested in the Governor General in Council, shall be possessed and may be exercised by the Governor in Council of Fort St George and the Governor in Council of Bombay, respectively, for the better custody of State prisoners arrested within their respective presidencies.

Powers of Governors of Madras and Bombay as to custody of State prisoners.

4. [*Arrests, etc, made before the passing of this Act legalized.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

5. The Governor General in Council may order the removal of any State prisoner, confined under the provisions of any of the said Regulations as amended and extended by this Act, from any fortress, jail or place in which he may be confined within either of the said presidencies, to any other fortress, jail or place of confinement within the territories under the government of India.

Removal of State prisoners from one place of confinement to another.

The Districts of Kámpur, Dairang, Nowgong, Subságar, Lakhimpur, Gáro Hills, Khási and Jaintia Hills, Cachá and Goálpara .

. See Gazette of India, 1887, Pt. I, p 78.

The Mokokchang sub-division of the Nága Hills District

Ditto 1891, Pt. I, p. 252

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

Kumaon and Garhwál . See Gazette of India, 1876, Pt I, p 605

The Taráí of the Province of Agra .

Ditto 1876, Pt. I, p 505.

It has been extended to the Shan States generally by the Shan States Laws and Criminal Justice Order, 1895, Schedule II. See Burma Gazette, 1895, Pt. I, p. 262, and Shan States Manual

<sup>1</sup> *Supra*, p 49

<sup>2</sup> The words "in the possession and" and "the East" and the word "Company" were repealed by the Repealing and Amending Act, 1891 (12 of 1891)

ACT No IX of 1859 <sup>1</sup>

[30th April, 1859.]

An Act to provide for the adjudication of claims to property seized as forfeited.

## Preamble.

WHEREAS it is expedient <sup>2</sup> to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of

<sup>1</sup> Short title, "The Forfeiture Act, 1859" See the Indian Short Titles Act, 1897 (14 of 1897)

The object of the un repealed parts of this Act is stated to be "to give validity to certain forfeitures or seizures of property which have been or are liable to be called in question on the ground of some irregularity of procedure or defect or informality in recording the conviction of the parties whose property has been forfeited or seized or of the absence of a formal adjudication of forfeiture as required by the Forfeiture Act, 1857 (25 of 1857)" (*Statement of Objects and Reasons, first paragraph*)

This Act has been declared in force in Upper Burma generally, except the Shan States, by the Burma Laws Act, 1898 (13 of 1898), Bur Code, Vol I, in British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code

The whole Act has been extended, under s 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts, namely —

Kumáon and Garhwál . . . . . See Gazette of India, 1876, Pt I, p 606

The Taná of the Province of . . . . . Ditto . . . . . 1876, Pt I, p 505

It has been declared, by notification under s 3 (b) of the same Act, not to be in force in the District of Jahaná . . . . . See Gazette of India, 1886, Pt I, p. 301

Sections 16, 17, 18 and 20 have been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s 3

The same sections have been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

Sindh, see Gazette of India, 1880, Pt. I, p. 672

West Jalpánguri, see Gazette of India, 1881, Pt I, p. 74

The District of Hazáribágh, see Gazette of India, 1881, Pt I, p. 507

The District of Loháidaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt I, p. 44), see Gazette of India, 1881, Pt I, p. 508

The District of Mánbhum, see Gazette of India, 1881, Pt I, p. 509

Paigana Dhálbhum in the District of Singhbhum, see Gazette of India, 1881, Pt I, p. 510

The Scheduled portion of the Muzápur District, see Gazette of India, 1879, Pt I, p. 383

Jaunsai Báwar, see Gazette of India, 1879, Pt I, p. 382

The Districts of Hazárá, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán [*Portions of the Districts of Hazárá, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt I, p. 857, and ibid, 1902, Pt I, p. 575, but its application has been barred to that portion of the Hazárá District known as Upper Tanawal by the Hazárá (Upper Tanawal) Regulation (2 of 1900), Punjab and N-W Code*] See Gazette of India, 1886, Pt I, p. 48

The Scheduled Districts of the Central Provinces, see Gazette of India, 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam, see Gazette of India, 1898, Pt I, p. 870

The District of Sylhet, see Gazette of India, 1879, Pt I, p. 631

The rest of Assam (except the North Lushá Hills), see Gazette of India, 1897, Pt I, p. 299

<sup>2</sup> Certain words were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

forfeiture made by such officers or other persons; It is enacted as follows —

1 to 15. [*Constitution, procedure, &c., of Special Commission Courts.*] *Rep by the Repealing Act, 1868 (VIII of 1868).*

16. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

Convictions involving forfeiture not questionable in suits relating to forfeited property.

17. Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

Conviction not questionable because capacity of convicting officer not shown.

18. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year, &c.

Nothing in this section shall extend to persons entitled to pardon upon Her Majesty's proclamation published in the *Calcutta Gazette Extraordinary*, dated the 1st of November, 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property shall be discharged by order of Government without a prosecution

Exemption of pardoned persons.

19. [*Release of property attached as forfeited*] *Rep by the Repealing Act, 1868 (VIII of 1868).*

20. Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited in respect of any property attached or seized as forfeited or liable to be forfeited to Government. Provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

Rights of parties not charged with offence involving forfeiture. Proviso.

ACT No. IX of 1860 <sup>1</sup>

[12th March, 1860.]

An Act to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers.

**Preamble** WHEREAS it is expedient to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers; It is enacted as follows.—

**Government may empower any Magistrate to decide disputes as to wages or price of work.** 1. It shall be lawful for the executive Government of any presidency or place within the British territories in India to invest any <sup>2</sup>Magistrate or other officer exercising the powers of a Magistrate with power to enquire into and decide disputes on account of wages, hire of carriage or the price of work between any workmen employed in the construction of any railway, canal or other public work, the construction of which is or shall be sanctioned by Parliament or by any such executive Government, and the person or persons by whom such workmen are employed.

**Pecuniary limit of Magistrate's jurisdiction.** 2. Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees \* \* \* \* ,

**Local limits of Magistrate's jurisdiction.** 3. The executive Government shall fix, and may from time to time alter, the local limits of the jurisdiction of any Magistrate invested with jurisdiction under section 1 of this Act. A Magistrate so invested may hold a Court for the investigation of disputes of the nature described in the said section at any place within the local limits of his jurisdiction.

**Procedure in investigation of disputes.** 4. The rules for the institution of suits as provided in <sup>4</sup> Act VIII of 1859 (*for simplifying the Procedure of the Courts of Civil Judicature* VIII of 1859. *not established by Royal Charter*) shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding

<sup>1</sup> Short title, "The Employers and Workmen (Disputes) Act, 1860" See the Indian Short Titles Act, 1897 (14 of 1897)

This Act has been declared in force in—

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I,

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 6, Bur. Code, Vol. I;

British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), Mánbhūm, and Pargana Dhálbhūm and the Kolhán in the District of Singhbhūm See Gazette of India, 1881, Pt. II, p. 504

<sup>2</sup> For instance of the exercise of this power, see Notification No. 935-A, N-W P Gazette, 1866, p. 9, and Notification No. 637-A, N-W P Gazette, 1865, p. 511. In the Central Provinces all Magistrates of the 1st class have been invested with powers under section 1, see Central Provinces Gazette, 1908, Pt. I, p. 413

<sup>3</sup> The words "and the claim is preferred within six months from the date of which the cause of action arose" at the end of section 2 regarding the limitation of suits were repealed by the Indian Limitation Act, 1871 (9 of 1871). For limitation, see now the Indian Limitation Act, 1908 (9 of 1908)

<sup>4</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing

5. There shall be no appeal against any decision passed under this No appeal Act.

6. The Magistrate, having heard and decided the case, shall make an Order for order for the payment of such sum of money (if any) as shall appear to payment him to be justly due, and, if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the Magistrate shall direct, the Magistrate shall issue his warrant to levy the Distress. money by distress and sale of the goods and chattels of the defaulter.

7. If any question shall arise whether any goods or chattels seized Questions as under the warrant of distress belong to the defaulter, or are liable to be to property distrained and sold as aforesaid, the same shall be determined in the manner provided by the said <sup>1</sup>Act VIII of 1859 for the determination of the like questions arising in the execution of decrees

8. Any person who shall voluntarily engage for a stipulated period Penalty for to work on any railway, canal or other public work, the construction of workmen neglecting or which is or shall be sanctioned in the manner specified in section 1 of this refusing to Act, or to execute any specific work in connection with such public work, and who shall wilfully and without lawful or reasonable excuse neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a Magistrate, to a fine not exceeding twenty rupees work.

The Magistrate may, at the request of the complainant or of any one Power to authorized to act on his behalf, instead of fining such person, order him to order specific perform the work according to the terms of his contract or engagement, and, if he shall fail to comply with the order, the Magistrate may, upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned with or without hard labour for any term not exceeding two months. performance.

9. This Act shall take effect only in those districts or places to which Operation of it shall be <sup>2</sup>extended by order \* \* \* of the executive Govern- Act- ment of any presidency or place

ACT No XXI OF 1860<sup>4</sup>.

[21st May, 1860]

## An Act for the Registration of Literary, Scientific and Charitable Societies.<sup>5</sup>

WHEREAS it is expedient that provision should be made for improv- Preamble. ing the legal condition of societies established for the promotion of

<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

<sup>2</sup> For such extensions, see the different Local Rules and Orders

<sup>3</sup> The words " of the Governor General of India in Council or " were repealed by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

<sup>4</sup> Short title " The Societies Registration Act, 1860 " See the Indian Short Titles Act, 1897 (14 of 1897)

<sup>5</sup> The Act (with the exception of the first four sections) is based on the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c 112), ss. 20 et seq

literature, science, or the fine arts, or for the diffusion of useful knowledge, <sup>1</sup>[the diffusion of political education] or for charitable purposes; It is enacted as follows —

Societies  
formed by  
memoran-  
dum of  
association  
and regis-  
tration

1. Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies <sup>2</sup> <sup>3</sup> form themselves into a society under this Act.

It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s 3 of the Laws Local Extent Act, 1874 (15 of 1874)

It has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol I, in British Baluchistan by s 3 of the Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

West Jalpáiguri . . . . . See Gazette of India, 1881, Pt. I, p. 74

The Districts of Hazáribágh,  
Lohádaga (now the Ranchi  
District, see Calcutta  
Gazette, 1899, Pt I, p. 44),  
and Mánbhūm, and Pargana  
Dhálbhūm and the Kolhán in  
the District of Singbhūm

Ditto 1881, Pt I, p. 504

The Scheduled portion of the  
Mirzápur District . . . .

Ditto 1879, Pt I, p. 383

Jaunsar Báwar . . . .

Ditto 1879, Pt. I, p. 302.

The Districts of Hazára, Pe-  
sháwái, Kohát, Bannu, Dera  
Ismail Khán and Dera Gházi  
Khán [Portions of the Dis-  
tricts of Hazára, Bannu,  
Dera Ismail Khán and Dera  
Ghází Khán and the Districts  
of Pesháwari and Kohát now  
form the North-West Frontier  
Province, see Gazette of  
India, 1901, Pt I, p. 857, and  
ibid, 1902, Pt I, p. 575, but  
its application has been var-  
ied to that portion of the  
Hazára District known as  
Upper Tanawal, by the  
Hazára (Upper Tanawal), Re-  
gulation (2 of 1900), Punjab  
and N-W Code]

Ditto 1886, Pt I, p. 48

The Scheduled Districts in  
Ganjam and Vizagapatam

Ditto 1898, Pt I, p. 870

The District of Sylhet

Ditto 1879, Pt I, p. 631

The rest of Assam (except the  
North Lushái Hills)

Ditto 1897, Pt I, p. 299

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

Sindh . . . . . See Gazette of India, 1880, Pt I, p. 672

Kumaon and Garhwál . . . . . Ditto 1876, Pt. I, p. 606

Ajmer and Merwáta . . . . . Ditto 1878, Pt I, p. 380

It has been declared, by notification under s 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul See Gazette of India, 1886, Pt I, p. 301.

<sup>1</sup> These words were added by the Societies Registration (Amendment) Act, 1927 (XXII of 1927)

<sup>2</sup> The words and figures "under Act 19 of 1857" were repealed by the Repealing Act, 1874 (16 of 1874) See now the Indian Companies Act, 1913 (7 of 1913)



2. The memorandum of association shall contain the following things (that is to say)—

Memoran-  
dum of  
association.

the name of the society.

the objects of the society.

the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association

3. Upon such memorandum and certified copy being filed, the registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the registrar for every such registration a fee of fifty rupees, or such smaller fee as the Governor General of India in Council may, from time to time, direct; and all fees so paid shall be accounted for to Government.

Registration.

Fees.

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

Annual list  
of managing  
body to be  
filed.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Property of  
society how  
vested.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Suits by and  
against  
societies.

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or

Suits not to  
abate.

proceedings shall be continued in the name of or against the successor of such person

Enforcement of judgment against society.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

Recovery of penalty accruing under bye-law.

9. Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient

Members liable to be sued as strangers.

10. Any member who may be in arrear of a subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury or destruction of property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged.

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

Members guilty of offences punishable as strangers

11. Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence

Societies enabled to alter, extend or abridge their purposes

12. Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to

amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society,

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Provision for dissolution of societies and adjustment of their affairs.

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

Assent required.

Provided that whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government.

Government consent.

14. If upon the dissolution of any society registered under this Act there shall remain after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such Court as aforesaid. Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-stock Company

Upon a dissolution no member to receive profit.

Clause not to apply to Joint-stock Companies.

<sup>1</sup> As to Bombay, see Bombay Societies Registration (Amendment) Act, 1912 (Bom. Act 2 of 1912), Bom. Code, Vol. V.

Member  
defined.

15. For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations, but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months

Disqualified  
members.

Governing  
body defined

16. The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

Registration  
of societies  
formed before  
Act.

17. Any company or society established for a literary, scientific or charitable purpose, and registered under <sup>1</sup>Act XLIII of 1850, or any such society established and constituted previously to the passing of this Act but not registered under the said <sup>1</sup>Act XLIII of 1850, may at any time hereafter be registered as a society under this Act, subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body

Assent  
required.

In the case of a company or society registered under <sup>1</sup>Act XLIII of 1850, the directors shall be deemed to be such governing body

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

Such societies  
to file memo-  
randum, etc.,  
with Regis-  
trar of Joint-  
stock Com-  
panies

18. In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-stock Companies <sup>2</sup>: \* a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

Inspection of  
documents.

19. Any person may inspect all documents filed with the registrar under this Act on payment of a fee of one rupee for each inspection, and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract, and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever

Certified  
copies.

<sup>1</sup> Repealed by the Indian Companies Act, 1866 (10 of 1866), s. 219.

<sup>2</sup> The words and figures "under Act 19 of 1857," were repealed by the Repealing Act, 1874 (16 of 1874). See now the Indian Companies Act, 1913 (7 of 1913)

20. The following societies may be registered under this Act.— To what societies Act applies.
- charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

ACT No XXXIV OF 1860 <sup>1</sup>

[2nd August, 1860.]

An Act to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances.

WHEREAS fines and penalties have been imposed and levied by officers of Government in respect of acts committed during the late disturbances; and whereas assessments and contributions have been made and collected for the reconstruction or repairs of public buildings destroyed or injured during the same period and for other purposes; and whereas it is expedient to indemnify all officers of Government and other persons acting under the authority of officers of Government from any penalties or proceedings to which they may have rendered themselves liable since the tenth day of May, 1857, in respect of the said fines, penalties, assessments and contributions, and of any other acts which may have been done by them, and which have been or shall be ratified by the executive Government, and to confirm and make valid the levy of the said fines, penalties, assessments and contributions, and the said acts; It is enacted as follows.— Preamble.

1. All fines, penalties, assessments and contributions imposed since the tenth day of May, 1857, in respect of the destruction or injury of Indemnity in respect of fines, penalties, etc., imposed since 10th May, 1857.

<sup>1</sup> Short title, "The Government Officers' Indemnity Act, 1860" See the Indian Short Titles Act, 1897 (14 of 1897)

The Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, <sup>see</sup> Calcutta, Gazette, 1899, Pt I, p 44) and Manbhum, and Paigana Dhálbhum and the Kolhán in the District of Singhbhum	. See Gazette of India, 1881, Pt I, p 504
The Scheduled portion of the Muzápur District . . .	Ditto 1879, Pt I, p 383.
Jaunsar Báwar . . .	Ditto 1879, Pt I, p. 382

It has been extended, by notification under s 5 of the last-mentioned Act, to the Tará of the Province of Agra. See Gazette of India, 1876, Pt I, p 505.

Government or other property, or on any other account connected with the late disturbances, by any officer of Government, or by any person acting under the authority of an officer of Government, shall be deemed to have been duly imposed and levied if the same shall have been levied in pursuance of an order of Government, or shall have been or shall be ratified by the executive Government, and all officers of Government and all persons acting under their authority are hereby indemnified and discharged from liability in respect of any such fines, penalties, assessments and contributions, and levying the same; and no suit or proceeding shall be commenced or prosecuted in respect thereof

**Proviso.**

Provided that nothing in this Act shall authorize the levy of any fine, penalty, assessment or contribution not already levied

Indemnity for  
certain acts  
done since  
10th May,  
1857

2. All acts done since the tenth day of May, 1857, in connection with the late disturbances by officers of Government, or by persons acting under their authority or otherwise, in pursuance of an order of Government, or which shall have been or shall be ratified by the executive Government, are hereby confirmed and made valid; and all such officers of Government and persons as aforesaid are hereby indemnified and discharged from liability in respect of such acts

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THE POLICE ACT, 1861.

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## FORM.

ACT No V of 1861.<sup>1</sup>

[22nd March, 1861.]

## An Act for the Regulation of Police

## Preamble

WHEREAS it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpreta-  
tion-clause.

1. The following words and expressions in this Act shall have the

<sup>1</sup> Short-title, "The Police Act, 1861" See the Indian Short-titles Act, 1897 (14 of 1897)

Act 5 of 1861 has been applied to—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s 4 (1), and Schedule I, Bur Code, Vol I. (As to its extension to Upper Burma, as amended by subsequent enactments under s 46, see notes to that section, *infra*.) (It has been extended to the Shan States, except Khamti Long and Mong Mit, by the Shan States Law and Criminal Justice Order, 1895 See Shan States Manual It is also in force in the State of Mong Mit (Momoik), with its dependency Mong Lang, see Burma Gazette, 1896, Pt I, p 252), the Act has been repealed in the town of Rangoon by Burma Act IV of 1899, see Vol II of the Bur Code The Act has also been amended in its application to Burma by Burma Act VI of 1925,



meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say,—

<sup>1</sup> the words “ Magistrate of the district ” shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled.

the word “ Magistrate ” shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate.

the word “ police ” shall include all persons who shall be enrolled under this Act:

the words “ general police-district ” shall embrace any <sup>2</sup> presidency, province or place, or any part of any presidency, province or place, in which this Act shall be ordered to take effect

the Sánthal Parganas by the Sánthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Sánthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I,  
the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, Burma Code, Vol. I,  
British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code,  
the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code, Vol. I,  
the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), Ben. Code, Vol. I,  
the Town of Calcutta and its suburbs as modified by the Calcutta Police Act, 1898, Ben. Act 1 of 1898, Ben. Code, Vol. III, and the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), s. 2.

The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely: the District of Hazaribagh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, p. 504; the Porahat Estate in the Singhbhum District, *see* Gazette of India, 1897, Pt. I, p. 1059, and under ss. 3 and 5A of the same Act, in the Pargana of Manpur, *see* Gazette of India, 1899, Pt. II, p. 419. The powers of a Local Government have been conferred on the Agent, Governor General, Central India, and also those of a High Court for the purposes of the Police Act, V of 1861.

It has been extended, by notification under s. 5 of the same Act, to the Kumaon and Garhwal Districts, *see* Gazette of India, 1891, Pt. I, p. 185, and (with the exception of s. 5) to the Scheduled District of Coorg, *see* Gazette of India, 1914, Pt. II, p. 2317. Ss. 15, 15A, 16, 30, 30A, 31 and 32 have been extended to the Scheduled Districts in Ganjam and Vizagapatnam, *see* Fort St. George Gazette, 1898, Pt. I, p. 667, and Gazette of India, 1898, Pt. I, p. 873.

As to special enactments in force in Madras, Bombay and Lower Provinces of Bengal, and extensions of this Act under the power conferred by s. 46, *see* notes to that section.

As to special enactments for Military, Frontier or Rural Police in force in certain parts of British India, *see* note to s. 8.

As to the relaxation of the provisions of the Police Act, 1861 (5 of 1861), which restrict the employment of police-officers to the presidency, province or place of the Police establishment of which they are members, *see* the Police Act, 1888 (3 of 1888).

<sup>1</sup> *Uf* also s. 3 (2) of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>2</sup> Under s. 2 of the Police Act, 1888 (3 of 1888), the Governor General in Council, notwithstanding this provision, may create a general police-district, consisting of parts of two or more presidencies, provinces or places.

The Chittagong Hill Tracts have been declared to be a general police-district for the purposes of this Act, *see* the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), s. 16, Ben. Code, Vol. I.

<sup>1</sup>[the words " District Superintendent " and " District Superintendent of Police " shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district.]

the word " property " shall include any moveable property, money or valuable security :

the word " person " shall include a company or corporation .

the word " month " shall mean a calendar month .

<sup>4</sup> the word " cattle " shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine

Constitution  
of the force.

<sup>2</sup> 2. The entire police-establishment under a Local Government shall, for the purposes of this Act, be deemed to be one <sup>5</sup> police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the Local Government, subject <sup>6</sup>[in the case of officers of the Indian Police of and above the rank of Assistant Superintendent] to the <sup>7</sup>[control] of the Governor General of India in Council.

Superintend-  
ence in the  
Local Gov-  
ernment.

3. The superintendence of the police throughout a general police-district shall vest in and, subject <sup>8</sup>[in the case of officers of the Indian Police of and above the rank of Assistant Superintendent] to the general control of the Governor General of India in Council, shall be exercised by the Local Government to which such district is subordinate; and, except as authorised under the provisions of this Act, no person, officer or Court

The North-West Frontier Province has been declared to be a general police-district for the purposes of this Act, *see* the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), s 13, Punj & N-W F Code

As to Delhi Province, *see* Gazette of India, 1912, Pt I, p 1105.

<sup>1</sup> This paragraph was inserted in s 1 by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s 1

<sup>2</sup> Certain words were repealed by Sch II of the Repealing and Amending Act, 1914 (10 of 1914)

<sup>3</sup> *Cf* definition of " cattle " in s 3 of the Cattle-trespass Act, 1871 (1 of 1871).

<sup>4</sup> Section 2, so far as it relates to the provinces under the administration of the Lieutenant-Governor of Bengal, was repealed by the Bengal Police Act, 1869 (Ben Act 7 of 1869), Ben Code, Vol II

<sup>5</sup> *See* note appended to s 8, *infra*, as to enrolment of the police force in certain places

<sup>6</sup> These words were inserted by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

<sup>7</sup> This word was substituted for the word " sanction " by Sch I, Pt I, of the Decentralization Act, 1914 (4 of 1914)

shall be empowered by the Local Government to appoint, supersede or control any police functionary

4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the <sup>1</sup> Local Government shall seem fit.

Inspector-General of Police, etc.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above mentioned shall from time to time be appointed by the Local Government, and may be removed by the same authority

5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

Powers of Inspector-General. Exercise of powers

6. [*Magisterial powers of police-officers*] *Rep by the Code of Criminal Procedure, 1882 (Act X of 1882).*

7. The appointment of all police-officers other than those mentioned in section 4 of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

Appointment, dismissal, etc., of inferior officers.

<sup>2</sup>or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:—

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;

<sup>1</sup> In the town and suburbs of Calcutta, the administration of the Police vests in the "Commissioner of Police" *Sec 3 of Bengal Act 4 of 1866 (Calcutta Police), Ben Code, Vol II*

<sup>2</sup> The second paragraph of s 7 was substituted for the words "or fine police-officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof," by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s 2 S 7 has also been amended in its application to Burma by the Police (Burma Amendment) Act, 6 of 1925

- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument.

Certificates  
to police-  
officers

8. <sup>1</sup> Every police-officer so appointed shall receive on his appointment a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.

Surrender of  
certificate.

<sup>2</sup>[Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same ]

<sup>2</sup>[A police-officer shall not by reason of being suspended from office cease to be a police-officer. During the term of such suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.]

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<sup>1</sup> As to enrolment, maintenance and discipline of—

- (1) the Military Police-force employed in—
  - (a) the Andaman and Nicobar Islands, *see* the Andaman and Nicobar Islands Military Police Regulation, 1888 (2 of 1888), Gazette of India, 1888, Pt. I, p. 391;
  - (b) Assam, *see* the Assam Rifles Act, 1920 (Assam Act 1 of 1920), Assam Code;
  - (c) Burma, *see* the Burma Military Police Act, 1887 (15 of 1887), Bur Code, Vol. I;
  - (d) Bengal, *see* the Eastern Frontier Rifles (Bengal Battalion) Act, 1920 (Ben Act 2 of 1920)
- (2) the Chittagong Hill Tracts Frontier Police, *see* the Chittagong Hill Tracts Frontier Police Regulation, 1881 (3 of 1881), Ben. Code, Vol. I;
- (3) the Rural Police in the Districts of Cachar and Sylhet, *see* the Sylhet and Cachar Rural Police Regulation, 1883 (1 of 1883), Assam Code, Vol. I;
- (4) the Punjab Frontier Police-officers, *see* the Punjab Frontier Police-officers Regulation, 1893 (7 of 1893), Punj & N-W Code,
- (5) the Calcutta and Suburban Police, *see* Bengal Act 4 of 1866 (Calcutta Police) and Bengal Act 2 of 1866 (Calcutta Suburban Police), Ben Code, Vol. II,
- (6) the Police establishment in municipal areas in the United Provinces of Agra and Oudh, *see* the United Provinces Municipalities Act, 1916 (U P Act 2 of 1916), U P Code, Vol. II,
- (7) the Police establishment in municipal areas in the Punjab, *see* the Punjab Municipal Act, 1911 (3 of 1911), Punj & N-W. Code,
- (8) the Rural Police in the Sānthāl Parganas, *see* the Sānthāl Parganas Rural Police Regulation, 1910 (4 of 1910), B & O Code, Vol. I,
- (9) the Rural Police in Chota Nagpur, *see* the Chota Nagpur Rural Police Act, 1914 (B & O Act 1 of 1914), B & O Code, Vol. III

<sup>2</sup> These paragraphs were substituted for the original paragraph by the Police Act 1861 Amendment Act, 1895 (8 of 1895), s 3

9. No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office,<sup>1</sup> unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police-officer not to resign without leave or two months' notice.

10. No police-officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

Police-officers not to engage in other employment.

11. [*Police superannuation fund.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

12. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and <sup>2</sup>rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Power of Inspector-General to make rules.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

Additional police-officers employed at cost of individuals.

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

14. Whenever any railway, canal or other public work, or any manufactory or commercial concern shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that

Appointment of additional force in the neighbourhood.

<sup>1</sup> Amended in its application to Burma by the Police (Burma Amendment) Act, 6 of 1925.

<sup>2</sup> For rules under s. 12, see different Local Rules and Orders.

hood of railway and other works.

the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

Quartering of additional police in disturbed or dangerous districts.

<sup>1</sup>[15. (1) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the Local Government by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

*Explanation.*—For the purposes of this section, “inhabitants” shall include persons who themselves or by their agents or servants occupy or

<sup>1</sup> This section was substituted by s. 4 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein.]

<sup>1</sup>[15A. (1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make, within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district or of the sub-division of a district within which such area is situated.

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

- (a) declare the persons to whom injury has been caused by or has ensued from such misconduct;
- (b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and
- (c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section:

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the Local Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by <sup>2</sup>[the Commissioner of the Division or] the Local Government, but save as aforesaid shall be final.

<sup>1</sup> Section 15A was inserted by s. 5 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>2</sup> In the North-West Frontier Province the words in brackets should be omitted, vide the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), First Schedule, Punj. & N.-W. Code.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation.*—In this section the word “inhabitants” shall have the same meaning as in the last preceding section.]

Recovery of moneys payable under sections 13, 14, 15 and 15A, and disposal of same when recovered.

<sup>1</sup>[16. (1) All moneys payable under sections 13, 14, 15 and 15A shall be recoverable by the Magistrate of the district in the manner provided by <sup>2</sup>sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines, or by suit in any competent Court. X of 1882.

(2) All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called “The General Police Fund,” and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section.]

Special police-officers.

17. When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officers may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of special police-officers.

18. Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

Refusal to serve as special police-officers.

19. If any person being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

<sup>1</sup> Section 16 was substituted by s. 6 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>2</sup> See now the same sections of the Code of Criminal Procedure, 1898 (Act 5 of 1898).



**20.** Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

Authority to be exercised by police-officers.

**21.** Nothing in this Act shall affect any hereditary or other village-police-officer, unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village-police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Village-police-officers.

If any police-officer appointed under <sup>2</sup>Act XX of 1856 (*to make better provision for the appointment and maintenance of Police-chaukidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

Police-chaukidars in the Presidency of Fort William.

**22.** Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

Police-officers always on duty and may be employed in any part of district.

**23.** It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

Duties of police-officers.

**24.** It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence. \* \* \* \* \*

Police-officers may lay information, etc.

<sup>1</sup> For some cases in which the application of s. 20 has been restricted, see the Assam Police-officers Regulation, 1883 (2 of 1883), Assam Code, Vol. I; the Burma Military Police Act, 1887 (15 of 1887), Bur. Code, Vol. I.

It has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border Police-force, see s. 2 of the Punjab Frontier Police-officers Regulation, 1893 (7 of 1893), Punj. & N.-W. Code.

<sup>2</sup> Punj. & N.-W. Code; U. P. Code and Aj. Code.

<sup>3</sup> The words "and to prosecute such person up to final judgment" were repealed by the Code of Criminal Procedure, 1882 (Act 10 of 1882).

Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

**25.** It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

Magistrate may detain property and issue proclamation.

**26.** (1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

<sup>1</sup>[(2) The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.]

X of 1882,

Confiscation of property if no claimant appears.

<sup>2</sup>[**27.** (1) If no person shall within the period allowed claim such property, or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be at the disposal of Government.]

Persons refusing to deliver up certificate, etc., on ceasing to be police-officers.

**28.** Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessities which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, etc.

**29.** Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, <sup>3</sup>[or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave,] or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

<sup>1</sup> This sub-section was added by s. 7 of the Police Act (1861) Amendment Act, 1895 (8 of 1895). Read now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>2</sup> This section was substituted by s. 8 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>3</sup> These words were added by s. 9 of *ibid.*

<sup>1</sup>[30. (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

Regulation of public assemblies and processions and licensing of same.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the District, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.

(3) On such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such license.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.]

Music in the streets.

<sup>2</sup>[30A. (1) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

Powers with regard to assemblies and processions violating conditions of license.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.]

**31.** It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghâts and landing-places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghât or landing-place may be thronged or may be liable to be obstructed.

Police to keep order in public roads, etc.

**32.** Every person opposing or not obeying the orders issued under the last <sup>3</sup>[three] preceding sections, or violating the conditions of any

Penalty for disobeying orders issued

<sup>1</sup> This section was substituted by s. 10 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>2</sup> Section 30A was inserted by s. 11 of *ibid.*

<sup>3</sup> The word "three" was substituted for the word "two" by s. 12 of *ibid.*

under last  
three sec-  
tions, etc.

license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

Saving of  
control of  
Magistrate of  
district.

**33.** Nothing in the last <sup>1</sup>[four] preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

Punishment  
for certain  
offences on  
roads, etc.

**34.** Any person who, on any road or in any <sup>2</sup>[open place or] street or thoroughfare within the limits of any town to which this section shall be specially <sup>3</sup>extended by the Local Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the <sup>4</sup>[residents or passengers] shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment <sup>5</sup>[with or without hard labour] not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

Power of  
police-  
officers.

Slaughtering  
cattle,  
furious  
riding, etc.

*First.*—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle:

Cruelty to  
animals.

*Second.*—Any person who wantonly or cruelly beats, abuses or tortures any animal:

Obstructing  
passengers.

*Third.*—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

Exposing  
goods for  
sale.

*Fourth.*—Any person who exposes any goods for sale:

Throwing  
dirt into  
street.

*Fifth.*—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials, or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung-heap or the like:

<sup>1</sup> The word "four" was substituted for the word "three" by s. 12 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>2</sup> These words were inserted by s. 10 of *ibid.*

<sup>3</sup> For list of the towns to which this section has been specially extended, see different Local Rules and Orders.

In the Presidencies of Madras and Bombay and in Burma there are separate Acts—see note to s. 46.

<sup>4</sup> These words were substituted for the words "residents and passengers" by s. 13 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>5</sup> These words were inserted by s. 3, second schedule, of the Repealing and Amending Act, 1903 (1 of 1903).

*Sixth.*—Any person who is found drunk or riotous or who is incapable of taking care of himself: Being found drunk or riotous.

*Seventh.*—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose: Indecent exposure of person.

*Eighth.*—Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure. Neglect to protect dangerous places.

**35.** <sup>1</sup> \* \* \* \* \* Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a <sup>2</sup>Magistrate. Jurisdiction.

**36.** Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act: Power to prosecute under other law not affected.

Provided that no person shall be punished twice for the same offence. Proviso.

XLV of 1861.  
X of 1882.

<sup>3</sup>[**37.** The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, and of sections 386 to 389, both inclusive, of the Code of Criminal Procedure, 1882, with respect to fines, shall apply to penalties and fines imposed under this Act on conviction before a Magistrate: Recovery of penalties and fines imposed by Magistrates.

Provided that, notwithstanding anything contained in section 65 of the first mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.]

**38.** [*Procedure until return is made to warrant of distress.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), s. 14.*

**39.** [*Imprisonment if distress not sufficient.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), s. 14.*

**40.** [*Levy of fines from European British subjects.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), s. 14.*

**41.** All sums paid for the service of process by police-officers, and all rewards, forfeitures and penalties or shares of rewards, forfeitures and Rewards to police and informers

<sup>1</sup> The words "In all cases of convictions under this Act the Officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict: Provided that," were repealed by the Code of Criminal Procedure, 1882 (Act 10 of 1882).

<sup>2</sup> i.e., by a Magistrate of the first class, see s. 3 (2) of the Code of Criminal Procedure, 1898 (5 of 1898).

<sup>3</sup> Section 37 was substituted for ss. 37, 38, 39 and 40 by s. 14 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>4</sup> Read now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

payable to  
General  
Police Fund.

penalties which by law are payable to informers shall, when the information is laid by a police-officer, be paid into the <sup>1</sup>General Police Fund.

Limitation  
of actions.

<sup>2</sup>42. *All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.*

Tender of  
amends.

No plaintiff shall recover in any such action if tender of sufficient amend shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action.

Proviso.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

Plea that act  
was done  
under war-  
rant.

<sup>3</sup>43. When any action of prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine:

Proviso.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

Police-  
officers to  
keep diary.

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or pro-

<sup>1</sup> See as to this fund. s. 16, *supra*.

<sup>2</sup> So much of s. 42 as relates to the limitation of suits was repealed by the Indian Limitation Act, 1871 (9 of 1871).

<sup>3</sup> A commandant or second-in-command of Military Police in Burma is entitled to the privileges which a police-officer has under ss. 42 and 43, *see* the Burma Military Police Act, 1887 (15 of 1887), s. 13, Bur. Code, Vol. I.

perty that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

Local Gov-  
ernment may  
prescribe  
form of re-  
turns.

<sup>1</sup>[46. (I) This Act shall not by its own operation take effect in any <sup>Scope of Act.</sup>  
<sup>2</sup>presidency, province or place. But the Governor General in Council, by an order to be published in the Gazette of India, may extend the whole or any part of this Act to any presidency, province or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province or place.]

<sup>1</sup> This section was substituted by s. 15 of the Police Act (1861) Amendment Act, 1895 (8 of 1895).

<sup>2</sup> In the Madras and Bombay Presidencies, and in Burma, there are special Police Acts, *see* Act 24 of 1859 (Mad. Code, Vol. I), Bombay Acts 7 of 1867 and 4 of 1890 (Bom. Code, Vols. II and III respectively, and Burma Act, IV of 1899, Bur. Code, Vol. II); and in the Lower Provinces of Bengal, Bengal Act, 7 of 1869, is to be read and taken as part of Act 5 of 1861, *see* s. 6 of the former Act, Ben. Code, Vol. II. But for the purposes of s. 2 of the Police Act, 1888 (3 of 1888), and notwithstanding s. 46 of this Act, the Act of 1861 shall be deemed to take effect throughout British India, *see* s. 2 (6) of Act 3 of 1888.

For notifications extending this Act under the power conferred by the original section 16--

- (1) the United Provinces of Agra and Oudh, including Ajmer-Merwara then under that Government, *see* Notification No. 964 in the North-Western Provinces Gazette, 1861, p. 634:

[For orders as to enforcement of the Act in 27 districts in the United Provinces of Agra and Oudh, in Hamirpur, Jalaun, Jhansi, Lalitpur, Naini Tal (including the Tarai Parganas) and Almora and Garhwal issued under the original s. 46, paragraph 2 (after the Act had been extended under paragraph 1 of that section to the whole province), *see* Notifications noted in U. P. List of R. & O. These orders are kept in force by s. 16 of Act 8 of 1895.

- (2) Oudh, *see* Notification No. 34 in the North-Western Provinces Gazette, 1861, p. 1758;
- (3) tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States, *see* Notification No. 205-F., at page 13 of the C. P. R. & O.;
- (4) Districts in Burma--
  - (a) Pegu [now the "Pegu and Irrawaddy Divisions," *see* Burma Gazette, 1881, Pt. II, p. 98, Notification No. 946], *see* Notification No. 1453, Burma Gazette, 1861, Pt. I, p. 2340;
  - (b) Tenasserim } *See* Notification No. 1906, Burma Gazette, 1861,  
Martaban } Pt. I, p. 3189;
  - (c) Arakan, *see* Notification No. 571, Burma Gazette, 1864, Pt. I, p. 45;
- (5) the Central Provinces, the Districts of Nagpur, Raipur, Bhandara, Chanda and Chhindwara, Sironcha, Ninar, *see* Cent. P. R. & O.;
- (6) Bengal and Assam, that is, the Provinces Governorship of Bengal and of Assam, *see* Notification No. 1371, set out at p. 14 of the Assam R. & O., Vol. I;
- (7) several districts in the Punjab, *see* Notification No. 971, dated 15th May, 1861, Calcutta Gazette, 18th May, 1861, p. 1302, and Punjab R. & O.

(2) When the whole or any part of this Act shall have been so extended, the Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(b) to prescribe the time, manner and conditions within and under which claims for compensation under section 15A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and,

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by the Local Government.

Authority of  
District  
Superinten-  
dent of Police  
over village-  
police,

**47.** It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to <sup>1</sup> declare that any authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village-police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

## FORM.

(See section 8.)

A B. has been appointed a member of the police-force under Act V of 1861, and is vested with the powers, functions and privileges of a police-officer.

Under the power conferred by the section as it now stands it has been extended as follows to—

- (1) Upper Burma (except the Shan States), *see* Notification No. 619, Burma Gazette, 1895, Pt. II, p. 265.
- (2) Madras, ss. 15, 15A, 16, 30, 30A, 31 and 32 of the Act have been extended to the whole of the Madras Presidency, *see* Notification No. 728, dated 31st October, 1895, Gazette of India, 1895, Pt. I, p. 876.
- (3) Eastern Doorgas in the Goalpara District, *see* Notification No. 230, Gazette of India, 1897, Pt. I, p. 198.
- (4) the North and South Lushai Hills and the tract known as Rutton Puiya's villages including Demagri (now known as the Lushai Hills), *see* Gazette of India, 1898, Pt. I, p. 370.

For list of Provinces and districts to which the Act has been extended by special enactments, *see* note (1) on p. 114, *supra*.

<sup>1</sup> For powers conferred under this section, *see* different Local Rules and Orders.



ACT No. XVI of 1861.<sup>1</sup>

[7th July, 1861.]

## An Act for licensing and regulating Stage-Carriages.

WHEREAS it is expedient to license and to regulate stage-carriages Preamble.  
in British India; It is enacted as follows:—

1. Every carriage drawn by one or more <sup>2</sup>horses which shall ordinarily Definition of  
be used for the purpose of conveying passengers for hire to or from any stage-carri-  
place in British India shall, without regard to the form or construction age.  
of such carriage, be deemed to be a stage-carriage within the meaning  
of this Act: \* \* \* \* \*

2. No carriage shall be used as a stage-carriage unless licensed by a Carriages to  
Magistrate or by the <sup>5</sup>\* Commissioner of Police of a Presidency-town. be licensed.

3. The Magistrate or <sup>5</sup>\* Commissioner of Police to whom the appli- Power to re-  
cation for a license of stage-carriage is made may refuse to license the fuse license.  
same if he shall be of opinion that such stage-carriage is unserviceable  
or is unsafe or unfit for public accommodation or use.

<sup>1</sup> Short title, "The Stage-Carriages Act, 1861." See the Indian Short Titles Act, 1897 (14 of 1897).

*Cf.* "The Stage-Carriages Act, 1832" (2 & 3 Wm. IV, c. 120); "The London Hackney Carriages Act, 1833" (3 & 4 Wm. IV, c. 48); "The Railway Passenger Duty Act, 1842" (5 & 6 Vict., c. 79); "The Railway Passenger Duty Act, 1847" (10 & 11 Vict., c. 42); "The Excise Act, 1848" (11 & 12 Vict., c. 118), s. 2.

Act 16 of 1861, as amended by the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), has been declared to apply to the whole of British India, but not so as to supersede or contravene provisions of local laws dealing with the same subject—see *infra*, s. 22. For local laws, see Bombay Act 7 of 1920, Bom. Code, Vol. V; the Madras Hackney Carriage Act, 1911 (Mad. Act 5 of 1911), Madras Code, Vol. II; and the Calcutta Hackney Carriage Act, 1919 (Bom. Act 1 of 1919). *Cf.* also the Hackney Carriage Act, 1879 (14 of 1879), U. P. Code, Vol. I.

It has been declared in force in British Baluchistan under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, <i>see</i> Calcutta, Gazette, 1899, Pt. I, p. 44) and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. <i>See</i> Gazette of India, 1881, Pt. I, p. 504.	
The Taráí of the Province of Agra . . . . .	Ditto 1876, Pt. I, p. 505.

It has been declared, by notification under s. 3 (a) of the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), to be in force in the Santhál Parganas, *see* Calcutta Gazette, 1901, Pt. I, p. 301.

<sup>2</sup> All expressions and provisions in this Act applied to horses, also apply to all other animals employed in drawing stage-carriages, *see* section 21, *infra*.

<sup>3</sup> The proviso to s. 1 was repealed by s. 2 of the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898). That proviso ran as follows:—

"Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than twenty miles."

<sup>4</sup> For definition of "Magistrate," *see* s. 21, *infra*.

<sup>5</sup> The word "Chief" was repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

Particulars of license.

If a Magistrate or <sup>1</sup> \* Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

Charge for and duration of license.

4. <sup>2</sup>[For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees or such less sum as the Local Government may fix, and such license shall be in force for one year from the date thereof.]

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the license for the name of the former proprietor without any further payment for that year; and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

Particulars to be painted on conspicuous part of carriage.

5. On any stage-carriage being licensed the proprietor thereof shall cause the number of the license and all the other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage.

Penalty for letting carriage without having particulars painted.

6. The proprietor of any licensed stage-carriage who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section shall be liable to a fine not exceeding one hundred rupees.

Penalty for letting for hire unlicensed carriage.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

Penalty for allowing carriage to be drawn by fewer animals or more passengers, etc., to be carried than provided by license.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the license, shall be liable on a first conviction to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage, than shall be provided by the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was

<sup>1</sup> The word "Chief" was repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

<sup>2</sup> This paragraph was substituted by s. 3 of the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898).

not committed with his connivance, and that he had taken every reasonable precaution and had made reasonable provision to prevent the commission of the offence.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture or cause or procure to be cruelly beaten, ill-treated, over-driven, abused or tortured, any horse employed in drawing or harnessed to any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which from sickness, age, wounds or other cause is unfit to be driven in such stage-carriage, shall for every such offence be liable to a fine not exceeding one hundred rupees. Penalty for ill-treating animals.

10. Any Magistrate or <sup>1</sup> Commissioner of Police within the local limits of whose jurisdiction any stage-carriage shall ply, or who has granted the license of any stage-carriage may cancel the license of such stage-carriage if it shall appear to him that such stage-carriage or any horse or any harness used with such carriage is unserviceable or unsafe or otherwise unfit for public accommodation or use. Revocation of license.

11. In any station or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the license of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act. Penalty for not conforming to provisions of section 5.

Such carriage with the horse harnessed thereto shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer; and, if thereupon any fine is imposed by such Magistrate and such fine is paid, such stage-carriage and horse shall be immediately released; and if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and if the fine be not sooner paid, they may be sold and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse; and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall through intoxication, neglect or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property Penalty for misconduct on part of driver.

<sup>1</sup> The word "Chief" was repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

**Penalty when recoverable from proprietor.**

**13.** Whenever the driver of any stage-carriage or the owner of any horse employed in drawing any stage-carriage shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or being known cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed:

**Proviso.**

Provided that if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

**Issue of summons.**

**14.** Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

**Adjudication of penalties.**

**15.** All penalties incurred under this Act shall be adjudged by a Magistrate or <sup>1</sup> Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or <sup>1</sup> \* Commissioner of Police shall be final.

**Recovery of penalties, etc.**

**16.** All penalties imposed under this Act, or any balance of any fine, costs or charges as mentioned in section 11 of this Act, may in case of non-payment or non-recovery thereof be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same.

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<sup>1</sup> The word "Chief" was repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Offender may be apprehended and detained in custody until return of warrant of distress.

18. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Imprisonment of offender if distress not sufficient.

19. If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Recovery of penalty and costs from European British subjects.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

Jurisdiction.

<sup>1</sup>[20A. (7) The Local Government may, by notification in the official Gazette, make <sup>2</sup>rules to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

- (a) prescribe forms for licenses under this Act, the sums payable for the same and the conditions on which they may be granted, and the cases in which they may be revoked;
- (b) provide for the inspection of stage-carriages, and of the animals employed in drawing them; and
- (c) regulate the number and length of the stages for which animals may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

<sup>1</sup> Section 20A was inserted by the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), s. 4.

<sup>2</sup> For rules under section 20A see different Local Rules and Orders.

(3) In making any rule under this section, the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.]

Interpreta-  
tion-clause.  
" Magis-  
trate."  
" British  
India."

**21.** The term " Magistrate " in this Act shall include all Magistrates and other persons exercising the powers of a <sup>1</sup>Magistrate :

The term " British India " in this Act shall denote the territories that are or shall be vested in Her Majesty by the <sup>2</sup>Statute 21 & 22 Vict., c., 106, entitled " An Act for the better government of India : "

Act applica-  
ble to all  
animals used  
for drawing  
carriages.

<sup>3</sup>[All expression and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any <sup>4</sup>carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India : ]

5*	*	*	*	*	*	*
5*	*	*	*	*	*	*

Extent of  
Act.

**[22.** This Act, as amended by subsequent Acts, extends to the whole of British India; but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force]

Power to  
Local Gov-  
ernment to  
exempt.

**[23.** The Local Government may, by notification in the official Gazette, exempt any carriages or class of carriages from all or any of the provisions of this Act.]

<sup>1</sup> As to officers exercising the powers of a Magistrate, *see* s. 3 (2) of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>2</sup> *See* now " The Government of India Act ", *cf.* definition of " British India ", in the General Clauses Act, 1897 (10 of 1897), s. 3 (7).

<sup>3</sup> This paragraph was substituted by s. 1 of the Stage-Carriages Act (1861) Amendment Act, 1876 (16 of 1876).

<sup>4</sup> That is, a " stage-carriage ". *See* s. 1 *supra*.

<sup>5</sup> Certain words were repealed by s. 3, and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

<sup>6</sup> Ss. 22 and 23 were added by s. 5 of the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898). The original s. 22 regarding the commencement of this Act as originally passed was repealed by the Repealing Act, 1870 (14 of 1870).

ACT No. III or 1862.<sup>1</sup>

[28th February, 1862.]

## An Act to amend the law relating to the use of a Government Seal.

WHEREAS it is expedient to adapt the law relating to the use of a Preamble. Government seal to the present form of the Government in India; It is enacted as follows:—

Whenever it is required by any Regulation of a Local Government, or by any Act of the Governor General of India in Council, that the seal of the East India Company shall be affixed on behalf or by the authority of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf or by the authority of a Local Government, to affix in lieu of the seal of the East India Company a

Seal to be  
used instead  
of seal of  
East India  
Company.

<sup>1</sup> Short title, "The Government Seal Act, 1862." See the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons of the Bill which became Act III of 1862, see Calcutta Gazette, 1862, p. 466. For Proceedings in Council relating to the Bill, see *ibid*, Supplement, pp. 28 and 71.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri and the Western Dvārs, see Gazette of India, 1881, Pt. I, p. 74.

The Districts of Hazāribagh, Lohārdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mānbhum, and Paigana Dhālbhum and the Kolhān in the District of Singhbhum, see Gazette of India, 1881, Pt. I, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam, see Gazette of India, 1898, Pt. I, p. 870.

The Scheduled portion of the Mirzāpur District, see Gazette of India, 1879, Pt. I, p. 383.

Jaunsar Bāwar, see Gazette of India, 1879, Pt. I, p. 382.

The districts of Hazāra, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (*Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān, Dera Ghāzi Khān and the Districts of Kohāt and Peshāwar now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazāra District known as Upper Tanawal, by the Hazāra (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*). See Gazette of India, 1886, Pt. I, p. 48.

The District of Sylhet, see Gazette of India, 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushāi Hills), see Gazette of India, 1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwāl. See Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India, 1886, Pt. I, p. 306.

seal bearing the designation of such Local Government, or, if the seal is to be affixed on behalf or by the authority of the Government of India, a seal bearing the inscription "Government of India"; and such instrument or document so sealed shall to all intents and purposes be as valid and effectual as if the seal so used had been that of the East India Company.<sup>1</sup>

ACT No. XVI of 1863.<sup>2</sup>

[10th March, 1863.]

An Act to make special provision for the levy of the Excise-duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry.

Preamble,

WHEREAS it is expedient to make special provision for the levy of the excise-duty payable on spirits used exclusively in arts and manufactures or in chemistry; It is enacted as follows:—

Duty payable on removal of such spirits from distillery.

1. Spirits intended to be used exclusively in arts and manufactures or in chemistry may be removed from any licensed distillery in any part of British India on payment of duty <sup>2</sup>[not exceeding five] per cent. on the value of the spirits:

Proviso.

Provided that no spirits shall be so removed until they have been effectually and permanently rendered unfit for human consumption.

<sup>1</sup> Legislation on this subject was originally suggested in order to meet a difficulty respecting the seal to be used under Act 19 of 1833 (*for the registration of coasting-vessels in the Bombay Presidency*). Section 8 of that Act requires that certificates of registry 'shall be sealed with the seal of the East India Company,' and the Government of Bombay were advised by their law officers that no other seal could properly be used for such certificates until some Act should be passed 'prescribing the seal to be used in lieu of the seal of the East India Company.'

<sup>2</sup> Short title, "The Excise (Spirits) Act, 1863." See the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons of the Bill which became Act 16 of 1863, see *Calcutta Gazette*, 1862, p. 4063 and for Proceedings in Council relating to the Bill see *ibid.*, Supplement, p. 449; and *ibid.*, 1863, p. 106.

The Act is repealed:—

in Madras, by the Madras Abkari Act (1 of 1886), Sch., as amended by the Madras Abkari (Amendment) Act (1 of 1913), Mad. Code, Vol. II.

in Bombay, by the Bombay Abkari (Amendment) Act (12 of 1912), Bom. Code, Vol. V.

in United Provinces, by the U. P. Excise Act (4 of 1910), U. P. Code, Vol. II.

in Punjab, by the Punjab Excise Act (1 of 1914), Punj. & N. W. Code.

in Central Provinces, by the C. P. Excise Act (2 of 1915), C. P. Code.

in Burma, by the Burma Excise Act (5 of 1917), Bur. Code, Vol. II.

in Bengal, in Bihar and Orissa and locally in Assam, by the Bengal Excise Act (5 of 1900), and the Eastern Bengal and Assam Excise Act (1 of 1910), Ben. Code, Vol. III and Assam Code.

The Act was declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (b) of the Scheduled Districts Act 1874 (14 of 1874) not to be in force in the Scheduled District of Lahaul. See *Gazette of India*, 1886, Pt. I, p. 301.

<sup>3</sup> These words were substituted for the words "calculated at ten" by s. 6 of the Indian Tariff Act, 1894 (3 of 1894).



2. The Board of Revenue, or other authority specially authorized in that behalf by the Local Government, shall prescribe from time to time, subject to the approval of the Local Government, rules—

Rules of ascertaining that spirits to be removed have been rendered unfit for human consumption, etc.!

for ascertaining and determining that spirits proposed to be removed for the purposes aforesaid have been effectually and permanently rendered unfit for human consumption, as required by section 1 of this Act:

for causing such spirits to be so rendered, if necessary, by its own officers at the expense of the person who wishes to remove them; and

for fixing the value of the spirit on which the *ad valorem* duty shall be levied.

3. Every person who shall wilfully contravene any rule prescribed by the Board of Revenue, or other authority as aforesaid, under the last preceding section of this Act, shall be liable on conviction before any officer exercising the powers of a Magistrate to a penalty not exceeding five hundred rupees for every such offence.

Penalty for breach of such rules.

4. Every person who shall attempt, or shall connive at an attempt, to render fit for human consumption, spirits removed from a distillery under the provisions of this Act, shall be liable to a penalty not exceeding one thousand rupees;

Penalty for attempting to render fit for human consumption spirits removed under Act.

and the possessor of such spirits on which such attempt has been made, or which may have been rendered fit for human consumption, shall be liable on conviction before any officer exercising the powers of a Magistrate, to a penalty not exceeding five hundred rupees.

5. Any penalty imposed under either of the last two preceding sections may in case of non-payment be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of the officer by whom such penalty was imposed.

Penalty how levied.

6. In case any such penalty shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody, until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

In case of non-payment of penalty, offender may be detained pending return to distress warrant.

7. If upon the return of such warrant it shall appear that no sufficient distress can be had whercon to levy such penalty, and the same shall not be forthwith paid, or

Imprisonment of offender in case of failure to recover penalty by distress.

in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if a warrant of distress were issued,

any such officer may by warrant under his hand commit the offender to the civil jail, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

8. [*Provisions of section 11, Act III of 1852, relating to adulteration, not to apply to spirits rendered unfit for consumption under Act.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891), s. 2 (I).*

Confiscation  
in cases of  
conviction  
under section  
3 or 4.

9. In every case of conviction under section 3 or section 4 of this Act, the liquor or spirits with the cask or vessel containing the same, **and the cart, boat and animal or animals employed in carrying such liquor or spirit,** shall be liable to confiscation.

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ACT No. XX of 1863.<sup>1</sup>

[10th March, 1863.]

An Act to enable the Government to divest itself of the management of Religious Endowments.

WHEREAS it is expedient to relieve the Boards of Revenue, and the Preamble,  
Local Agents, in the Presidency of Fort William in Bengal, and the  
Presidency of Fort Saint George, from the duties imposed on them by

<sup>1</sup> Short title, "The Religious Endowments Act, 1863." See the Indian Short Titles Act, 1897 (14 of 1897).

For the Statement of Objects and Reasons of the Bill which became Act 20 of 1863, see Calcutta Gazette, 1862, p. 753, and for Proceedings in Council relating to the Bill, see *ibid*, Supplement, p. 28; and *ibid*, 1863, p. 105.

The Act has been extended to Kanara by the Religious Endowments (Extension to Kanara) Act (7 of 1865), which was specially passed for that purpose. See Bom. Code, Vol. II.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:

The Districts of Hazáribágh,  
Lohárdaga (now the Ranchi  
District, see Calcutta  
Gazette, 1899, Pt. I, p. 44),  
and Mámbhum, and Pargana  
Dhálbhum and the Kolhán in  
the District of Singbhum. See Gazette of India, 1881, Pt. I, p. 504.

The Scheduled portion of the  
Mirzápur District . . . Ditto 1879, Pt. I, p. 338.

Jaunsar Báwar . . . Ditto 1879, Pt. I, p. 332.

The Scheduled Districts in  
Ganjam and Vizagapatam . . . Ditto 1898, Pt. I, p. 870.

The Districts of Hazára, Pesh-  
áwar, Kohát, Bannu, Dera  
Ismail Khán and Dera Gházi  
Khán. [Portions of the Dis-  
tricts of Hazára, Bannu,  
Dera Ismail Khán and Dera  
Gházi Khán and the Dis-  
tricts of Pesháwar and  
Kohát now form the  
North-West Frontier Pro-  
vince, see Gazette of India,  
1901, Pt. I, p. 857 and *ibid*,  
1902, Pt. I, p. 575; but its  
application in that part of  
the Hazára District known  
as Upper Tanawal is barred  
by the Hazára (Upper Tana-  
wal) Regulation, 1900 (3 of  
1900), Punj. & N.-W. Code.] Ditto 1886, Pt. I, p. 48.

Assam (except the North Lushái  
Hills) . . . Ditto 1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kunáon and Garhwál . . . See Gazette of India, 1876, Pt. I, p. 606.

The Taráí of the Province of  
Agra . . . Ditto 1876, Pt. I, p. 505.

Ajmer and Merwára . . . Ditto 1877, Pt. I, p. 605.

S. 22 applies to the whole of British India.

It has been repealed (in Madras as to Hindu Religious Endowments) by the Madras Hindu Religious Endowments Act (II of 1927).

**Regulation XIX, 1810, of the Bengal Code** (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras and other public buildings; and for the custody and disposal of Nazul Property or Escheats*), and **Regulation VII, 1817, of the Madras Code** (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connexion with the management of such religious establishments; <sup>1\*</sup> \* \* \* \*. It is enacted as follows:—

Ben. Reg. XIX of 1810.

Mad. Reg VII of 1817.

**1.** [*Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Interpreta-  
tion clause.

**2.** In this Act—

2\* \* \* \*

“Civil Court”  
and “Court.”

2\* \* \* \*

the words “Civil Court” and “Court” shall <sup>3</sup>[save as provided in section 10] mean the principle Court of original civil jurisdiction in the district in which <sup>3</sup>[or any other Court empowered in that behalf by the Local Government within the local limits of the jurisdiction of which] the mosque, temple or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

Government  
to make  
special provi-  
sion respect-  
ing mosques,  
etc.<sup>4</sup>

**3.** In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in <sup>4</sup>[the preamble to this Act,] are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government

<sup>1</sup> The words and figures “and whereas it is expedient for that purpose to repeal so much or Regulation 19, 1810, of the Bengal Code, and Regulation 7, 1817, of the Madras Code, as relate to endowments for the support of mosques, Hindu temples or other religious purposes,” were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> Certain words were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

<sup>3</sup> These words were inserted by s. 2 of the Religious Endowments (Amendment) Act, 1925 (21 of 1925).

<sup>4</sup> These words were substituted for the word and figure “section 1” by the Repealing and Amending Act, 1891 (12 of 1891).

or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

4. In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided;

Transfer to trustees, etc., of trust-property in charge of Revenue Board.

and the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

Cessation of Board's powers as to such property.

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong; or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

Procedure in case of dispute as to right of succession to vacated trusteeship.

The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

Powers of managers appointed by Court.

6. The rights, powers and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque,

Rights, etc., of trustees to whom property is transferred under section 4.

temple or religious establishment, and over such trustee, manager or superintendent, which authority is hereby determined and repealed.

**Appointment  
of commit-  
tees.**

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made.

**Constitution  
and duties of  
committees.**

7. In all cases described in section 3 of this Act the Local Government shall once for all appoint one or more committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

**Qualifica-  
tions of mem-  
ber of com-  
mittee.**

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

**Ascertaining  
wishes of per-  
sons interest-  
ed.**

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held, under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.

**Tenure of  
office.**

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

**Removal.**

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

**Vacancies to  
be filled.**

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

**Procedure.**

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government;

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

**When Court  
may fill  
vacancy.**

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill

the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

<sup>1</sup>[*Explanation.*—In this section “Civil Court” means the principal Court of original civil jurisdiction in the district in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situate.]

11. No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

No member of committee to be also trustee, etc., of mosque, etc.

12. Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for,

On appointment of committee, Board and local agents to transfer property.

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

Termination of powers and responsibilities of Board and agents.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

Commencement of powers of committee.

13. It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment;

Duty of trustee, etc., as to accounts;

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

and of committee.

14. Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the

Persons interested may singly sue in

<sup>1</sup> This Explanation was added by s. 3 of the Religious Endowments (Amendment) Act, 1925 (21 of 1925).

case of breach of trust, etc. service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively;

Powers of Civil Court.

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

Nature of interest entitling person to sue.

15. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

Reference to arbitrators.

16. In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Act VIII of 1859 applied.

Whenever any such order shall be made, the provisions of Chapter VI of the <sup>1</sup>Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under <sup>1</sup>section 312 of the said Code.

Reference under Act VIII of 1859.

17. Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said section 312 of the said <sup>1</sup>Code of Civil Procedure.

Application for leave to institute suits.

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.      2\*      \*      \*      \*      \*      \*      \*

<sup>1</sup> See now the Code of Civil Procedure (Act V of 1908).

<sup>2</sup> The words "The application may be made upon unstamped paper" were repealed by s. 2 and Sch. III of the Court-fees Act, 1870 (7 of 1870).



The Court, on the perusal of the application, shall determine whether there are sufficient *primâ facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.<sup>1</sup> \* \* \* \* \*

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate. Costs.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary. Court may require accounts of trust to be filed.

20. No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust. Proceedings for criminal breach of trust.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character, Cases in which endowments are partly for religious and partly for secular purposes.

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. Except as provided in this Act, it shall not be lawful \* \* \* Government not to hold charge henceforth of property for

<sup>1</sup> The words "In calculating the costs at the determination of the suit, the stamp duty on the preliminary application shall be estimated and shall be added to the costs of the suit," were repealed by s. 2 and Sch. III of the Court-fees Act, 1870 (7 of 1870).

<sup>2</sup> The words "after the passing of this Act" were repealed by the Repealing Act, 1874 (16 of 1874).

support of  
any mosque,  
temple, etc.

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

Effect of Act  
in respect of  
Regulations  
therein men-  
tioned, and  
of buildings  
of antiquity,  
etc.

**23.** Nothing in this Act shall be held to affect the provisions of the <sup>1</sup>Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve <sup>2</sup>buildings remarkable for their antiquity, or for their historical or architectural value or required for the convenience of the public.

“India.”

**24.** The word <sup>3</sup> “India” in this Act shall denote the territories which are or may become vested in Her Majesty by the <sup>4</sup>Statute 21 & 22 Vict., c. 106, entitled “An Act for the better government of India”.

## THE WASTE LANDS CLAIMS ACT, 1863.

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2. Procedure in such cases.  
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3. Postponement of sale pending enquiry, to allow claimant to contest rejection of claim.
4. Sale to be stopped if claim appear to be established, but may afterwards be proceeded with.

<sup>1</sup> Namely, the Bengal Charitable Endowments, Public Buildings and Escheats Regulation (19 of 1810), (Ben. Code, Vol. 1), and the Madras Endowments and Escheats Regulation (7 of 1817) (Mad. Code, Vol. I).

<sup>2</sup> See now also the Ancient Monuments Preservation Act, 1904 (7 of 1904).

<sup>3</sup> That is, “British India.” Cf. definition of “British India” and “India” in s. 18 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63) and in s. 3 (7) and 3 (27), respectively, of the General Clauses Act, 1897 (10 of 1897).

<sup>4</sup> See now “the Government of India Act”.

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- 23A. Exercise of power of the Local Government by the Board of Revenue or the Financial Commissioner.
24. [*Repealed.*]

ACT No. XXIII or 1863.<sup>1</sup>

[10th March, 1863.]

An Act to provide for the adjudication of claims to waste lands

Preamble.]

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste lands proposed

<sup>1</sup> Short title, "The Waste Lands (Claims) Act, 1863." See the Indian Short Titles Act, 1897 (14 of 1897). For Proceedings relating to the Bill, see Calcutta Gazette, 1863, Supplement, p. 109.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has further been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri . . . . . See Gazette of India, 1881, Pt. I, p. 1.

The Districts of Hazáribágh,  
Lohárdaga (now the Ranchi  
District, see Calcutta  
Gazette, 1899, Pt. I, p. 44),  
and Mánbhum, and Pargana  
Dhálbhum and the Kolhán in  
the District of Singbhum . . . Ditto 1881, Pt. I, p. 504.

The Porahat estate in the  
Singbhum District . . . Ditto 1897, Pt. I, p. 1059.

Kumáon and Garhwál . . . Ditto 1876, Pt. I, p. 605.

The Scheduled portion of the  
Mirzápur District . . . Ditto 1879, Pt. I, p. 383.

Jaunsar Báwar . . . . . Ditto 1879, Pt. I, p. 382.

The Districts of Hazára, Pesh-  
áwar, Kohát, Bannu, Dera  
Ismail Khán and Dera Gházi  
Khán. [Portions of the Dis-  
tricts of Hazára, Bannu,  
Dera Ismail Khán and Dera  
Gházi Khán and the Dis-  
tricts of Pesháwar and  
Kohát now form the  
North-West Frontier Pro-  
vince, see Gazette of India,  
1901, Pt. I, p. 857 and ibid,  
1902, Pt. I, p. 575; but its  
application to that part of  
the Hazára District known  
as Upper Tanawal has been  
barred by the Hazára (Upper  
Tanawal) Regulation, 1900 (2  
of 1900), Punj. & N.-W.  
Code] . . . . . Ditto 1886, Pt. I, p. 48.

The District of Lahaul . . . Ditto 1886, Pt. I, p. 301.

The District of Sylhet . . . Ditto 1879, Pt. I, p. 631.

The Districts of Kámrup, Nau-  
gong, Darrang, Sibságar,  
Lakhimpur, Goálpára (ex-  
cluding the Eastern Dvárs)  
and Cachar (excluding the  
North Cachar Hills) . . . Ditto 1878, Pt. I, p. 533.

It has been declared under s. 3 (b) of the same Act not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, see Gazette of India, 1898, Pt. I, p. 872.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Western Dvárs . . . . . See Gazette of India, 1875, Pt. I, p. 497.

The Taráí of the Province of  
Agra . . . . . Ditto 1876, Pt. I, p. 505.

to be sold, or otherwise dealt with, on account of Government, and of objections taken to the sale or other disposition of such lands: It is enacted as follows:—

1. When any claim shall be preferred to any waste land proposed to be sold, or otherwise dealt with, on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of Land Revenue in such district by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objections.

Provision for enquiry in claims to land, or objections to sale of same.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence, or documents, upon which he may rely in proof of his claim or objection; and after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection; and if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

Procedure in such cases.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

Notification of conditions.

3. Pending an enquiry into any claim or objection under the last preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land;

Postponement of sale pending enquiry, to allow

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

claimant to contest rejection of claim.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land;

Sale to be stopped if claim appears to be established, but may afterwards be proceeded with.

but such sale or other disposition of the land may afterwards be proceeded with, if, on an order issued <sup>1</sup> \* \* \* \* to try the claim or objection, as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector;

Delivery to claimant of copy of order of rejection or of sale.

<sup>1</sup> The words "by the Local Government" were omitted by Sch. Pt. I, of the Decentralization Act, 1914 (4 of 1914).

Order when final.

and if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final.

Report to Board.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the <sup>1</sup> \* \* \* superior revenue authority <sup>2</sup> [to which he is immediately subordinate] and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection;

Decision of Board.

and such <sup>3</sup> \* \* \* authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify or reverse the order of the Collector or other officer as aforesaid.

Certification to Court.

If the <sup>3</sup> \* \* \* authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided;

Notice to claimant.

and such Court shall forthwith give notice to the claimant or objector;

Decision when final.

and if such claimant or objector shall not <sup>4</sup> \* \* \* \* \* institute a suit in such Court to establish his claim or objection, the order of the <sup>3</sup> \* \* \* authority aforesaid shall be final.

Power to order suit to try claim admitted by Collector.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste land, or the objection of any objector, as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in a Court constituted as hereinafter provided.

Special Court for trying claims.

7. For the investigation and trial of claims under this Act, the Local Government shall constitute, in every district in which there may be any waste lands capable of being sold, or otherwise dealt with, on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district, or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

<sup>1</sup> The words "Board of Revenue or other" were omitted by Sch. Pt. I of the Decentralization Act, 1914 (4 of 1914).

<sup>2</sup> These words were inserted by *ibid*.

<sup>3</sup> The words "Board or other" were omitted by *ibid*.

<sup>4</sup> The words "within thirty days from the delivery of such notice from the Court" were repealed by the Indian Limitation Act, 1871 (9 of 1871). For limitation, see now the Indian Limitation Act, 1908 (9 of 1908).

Any one or more of the members of which such Court shall consist shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit: Power of members.

Provided that, whenever the Collector, or other officer, by whom the original enquiry was held, is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court. Exclusion of officer making original enquiry.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by a written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district: Notice of constitution of Special Courts.

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted. Claims not cognizable in other Courts.

9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient. Special Courts where held.

10. In every suit instituted under section 5 of this Act, the claimant of the waste land, or objector to the sale or other disposition of such land, shall appear as plaintiff; and the Collector, or other officer aforesaid, shall appear as defendant on the part of Government. Plaintiff and Defendant in suit under section 5.

Either party may appear by pleader or by agent: Appearance.

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf. Proviso.

In any suit ordered to be instituted <sup>1</sup> \* \* \* under section 6 of this Act, the Government, by any officer, to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant. Plaintiff and defendant in suits under section 6.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure. Regulation of proceedings.

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agents; and on the day so fixed, the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements. Procedure before hearing.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Procuring attendance of witnesses.

<sup>1</sup> The words "by the Local Government" were omitted by Sch. Pt. I of the Decentralization Act, 1914 (4 of 1914).

Court shall issue a subpoena requiring such witness to attend the Court on that day.

Power to  
require  
attendance  
of claimant.

It shall be competent to the Court to require the personal attendance of the claimant of the waste land, or objector, as aforesaid, on the day fixed for the hearing, or at any subsequent stage of the suit.

Procedure on  
hearing.

**13.** On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste land, or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

No appeal or  
revision.

**14.** No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

Reference of  
question of  
law, etc., to  
High Court,  
etc.

**15.** If, on the trial of any suit under this Act, any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of Appeal and Revision in the territory in which the land is situate:

When reference  
obligatory.

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of Appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

Court may  
proceed notwithstanding  
reference.

**16.** The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of Appeal as aforesaid; and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred;

but not make  
final order.

but no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed, until the receipt of the order of the said High Court, or highest Civil Court of Appeal.

Records  
of cases  
where to be  
deposited.

**17.** The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

Limitation  
as to claims  
to land sold  
or dealt with.

**18.** No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government as waste land, shall be received after the expiration of three years from



the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered, or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate; and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid, within the period limited under section 1 of this Act; such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district), the defendant in the suit;

Provision for such claims if preferred within time.

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

19. In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute; but shall order him to receive from the Government Treasury, by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

If claim established, possession not to be given, but compensation.

20. If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum, in respect of his interest in such land, as shall be awarded in that behalf under the provisions of <sup>1</sup> Act VI of 1857 (*for the acquisition of land for public purposes*),

When land sold not absolutely, or not sold, but otherwise dealt with.

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

21. An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector; and shall bar any future claim on his part, in respect to the land in suit resting on the same cause of action, or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government.

Award under two last sections to be in full satisfaction.

<sup>1</sup> See now s. 2 of the Land-acquisition Act, 1894 (1 of 1894).

Government not barred from awarding compensation for land absolutely sold, though claim be not preferred in time.

22. Nothing in this Act shall be held to prevent the Local Government from awarding, to any claimant of waste land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act), such amount as compensation for the said land, within the limit as to amount mentioned in section 19 of this Act, if the land have been sold not subject to any condition or reservation, as to such Local Government may seem proper.

Compensation for land sold subject to condition, if claim proved, though not preferred in time.

23. If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act, within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

Exercise of power of the Local Government by the Board of Revenue or the Financial Commissioner.

<sup>1</sup>[23-A. In a province for which there is a Board of Revenue or a Financial Commissioner, the powers and duties of the Local Government under sections 6, 10, 22 and 23 may be exercised by such Board or Financial Commissioner, as the case may be.]

24. [Interpretation-clause. Number. Gender.] Rep. by Repealing and Amending Act, 1914 (10 of 1914).

### ACT No. XXXI of 1863.<sup>2</sup>

[16th December, 1863.]

An Act to give effect to the publication of certain orders and other matters in the *Gazette of India*.

Preamble.

WHEREAS the Governor General of India in Council has resolved to publish an official Gazette to be called the *Gazette of India*, containing

<sup>1</sup> Section 23A was inserted by Sch. Pt. I of the Decentralization Act, 1914 (4 of 1914); S. 23A has been omitted in its application to the U. P., see the United Provinces Board of Revenue Act (12 of 1922).

<sup>2</sup> Short title, "The Official Gazettes Act, 1863." See the Indian Short Titles Act 1897 (14 of 1897).

For the Statement of Objects and Reasons of the Bill which became Act 31 of 1863, see the Calcutta Gazette, 1863, p. 3288 and for Proceedings relating to the Bill, see *ibid*, Supplement, pp. 573 and 582.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

such orders, notifications and other matters as the Governor General of India in Council shall direct to be inserted therein; It is enacted as follows:—

1. When in any Regulation or Act now in operation, or in any rule having the force of law, it is directed that any order, notification or other matter shall be published in the official Gazette of any presidency or place, such order, notification or other matter shall be deemed to be duly published in accordance with the requirements of the law if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the *Gazette of India* under the directions of the Governor General of India in Council.

Publication in *Gazette of India* to have effect of publication in other Gazettes in which publication is prescribed by law.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . . See Gazette of India, 1880, Pt. I, p. 672.

West Jalpaiguri, the Western Dvārs, the Western Hills of Dārjiling, the Dārjiling Tarāi, and the Damson Sub-division of the Dārjiling District . . . . . Ditto 1881, Pt. I, p. 74.

The Districts of Hazāribagh, Lohārdāga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mānbhum, and Pargana Dhālbum and the Kolhān in the District of Singhbhum . . . . . Ditto 1881, Pt. I, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam . . . . . Ditto 1898, Pt. I, p. 870.

The Scheduled portion of the Mirzapur District . . . . . Ditto 1879, Pt. I, p. 383.

Jaunsar Bārwar . . . . . Ditto 1879, Pt. I, p. 382.

The Districts of Hazāra, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshāwar and Kohāt now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575; but its application to that part of the Hazāra District known as Upper Tanawal is barred by the Hazāra (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-IV. Code) . . . . . Ditto 1886, Pt. I, p. 48.

The District of Lahaul . . . . . Ditto 1886, Pt. I, p. 306.

The Scheduled Districts of the Central Provinces . . . . . Ditto 1879, Pt. I, p. 771.

The District of Sylhet . . . . . Ditto 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushāi Hills) . . . . . Ditto 1897, Pt. I, p. 299.

It has been extended, by notification, under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumāon and Garhwāl. See Gazette of India, 1876, Pt. I, p. 606.

ACT No. III of 1864.<sup>1</sup>

[12th February, 1864.]

An Act to give the Government certain powers with respect to Foreigners.

## Preamble

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or sojourning

<sup>1</sup> Short title, "the Foreigners Act, 1864." See the Indian Short Titles Act, 1897 (14 of 1897).

For special direction from Parliament to pass this Act, see s. 84 of the Government of India Act, 1833 (3 and 4 Will. IV, c. 85), Coll. Stats., Ind., Vol. I.

For the Statement of Objects and Reasons of the Bill which became Act 3 of 1864, see Calcutta Gazette, 1863, p. 2163; for Proceedings relating to the Bill, see *ibid*, Supplement, p. 581, and Gazette of India, 1864, Supplement, p. 41.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code, Vol. I, but its application to Chins in the Chin Hills has been barred by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code, Vol. I, and to hill-tribes in a hill-tract to which the Regulation applies by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), Bur. Code, Vol. I.

the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code, Vol. I.

the Arakan Hill Districts by the Arakan Hill District Laws Regulation 1916 (1 of 1916), s. 2, Bur. Code, Vol. I.

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code;

Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. and O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts namely:—

Sindh . . . . .	See Gazette of India, 1878, Pt. I, p. 462.
Aden . . . . .	See Gazette of India, 1879, Pt. I, p. 434.
West Jalpaiguri, the Western Dvārs, the Western Hills of Dārjiling, the Dārjiling Tarāi, and the Damson Sub-division of the Dārjiling District . . . . .	Ditto 1881, Pt. I, p. 74.
The Districts of Hazāribagh, Lohārdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44, and Mānbhum, and Pargana	
Dhālbum and the Kolhān in the District of Singbhum . . . . .	Ditto 1881, Pt. I, p. 504.
The Porhat Estate in the Singbhum District . . . . .	Ditto 1897, Pt. I, p. 1059.
The Scheduled portion of the Mirzapur District . . . . .	Ditto 1879, Pt. I, p. 383.
Jaunsar Bārwar . . . . .	Ditto 1879, Pt. I, p. 382.
The Districts of Hazāra, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (Portions of the Districts of Hazāra, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshāwar and Kohāt now form the North-	

in British India, or from passing through or travelling therein, without the consent of the Government; it is enacted as follows:—

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

The words "British India" shall denote the territories which are or may become vested in Her Majesty by the <sup>2</sup> Statute 31 and 22 Victoria, Chap. 106, entitled "An Act for the better government of India":

the words "Local Government" shall denote the persons authorised to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor General of India in Council, when such chief executive officer shall, by an order of the Governor General of India in Council published in the Gazette of India, be authorized to exercise the powers vested by this Act in a Local Government:

the word "foreigner" shall denote a person:—

<sup>3</sup>[(a) who is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or

4 and 5 Geo.  
V, c. 17.

*West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, 1902, Pt. I, p. 575; but its application in that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code).*

*See Gazette of India, 1886, Pt. I, p. 48.*

The District of Lahaul . . . Ditto 1886, Pt. I, p. 301.

The Scheduled Districts of the Central Provinces . . . Ditto 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam . . . Ditto 1898, Pt. I, p. 870.

The District of Sylhet . . . Ditto 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushái Hills) . . . Ditto 1897, Pt. I, p. 209.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumaon and Garhwal . . . *See Gazette of India, 1876, Pt. I, p. 606.*

The Taráí of the Province of Agra . . . Ditto 1876, Pt. I, p. 505.

<sup>1</sup> Cf. definition of "British India" in s. 18 of the Interpretation Act (52 and 53 Vict., c. 63), and in s. 3 (7) of the General Clauses Act, 1897 (10 of 1897).

<sup>2</sup> See now the Government of India Act.

<sup>3</sup> These words were substituted for the words "not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 and 4 William IV, Chap. 85, section 81, or a Native of British India" by s. 2 of the Foreigners (Amendment) Act, 1915 (3 of 1915).

- (b) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India :

Provided that any British subject who, under any law for the time being in force in British India, ceases to be a British subject, shall thereupon be deemed to be a foreigner.]

“Magistrate of the district.”

the words “the Magistrate of the district” shall denote the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a **Magistrate as defined in the Code of Criminal Procedure :**

V of 1898.

“Vessel.”

the word “vessel” shall include anything made for the conveyance **by water of human beings or property :<sup>1</sup>**

[*Number.*] *Rep. by Act X of 1914.*

[*Gender.*] *Rep. by Act X of 1914.*

Proof of being a foreigner.

2. If a question shall arise whether any person alleged to be a foreigner and to be subject to the provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of **proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.**

Government may order any foreigner to remove himself.

3. The Governor General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order; and any Local Government may, by writing, make the like order with reference to any foreigner, within the jurisdiction of such Government.

Foreigner may be apprehended and detained pending order of removal.

<sup>2</sup>[**3A. (1)** Whenever in a Presidency town the Commissioner of Police or elsewhere the Magistrate of the District, considers that the Local Government should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town or of the jurisdiction of such Magistrate, he may report the case to the Local Government and at the same time issue a warrant for the apprehension of such foreigner.

(2) Any officer issuing a warrant under sub-section (1) may, in his discretion, direct by endorsement on the warrant that if such foreigner executes a bond with or without sureties for his attendance at a specified place and time, the person to whom the warrant is directed shall take such security and release such foreigner from custody.

<sup>1</sup> Cf. definition in s. 3 (56) of the General Clauses Act, 1897.

<sup>2</sup> Section 3A was inserted by s. 3 of the Foreigners (Amendment) Act, 1915 (3 of 1915).

(3) Any person executing a warrant under sub-section (1) may search for and apprehend the foreigner named in such warrant; and, subject to any direction issued under sub-section (2), shall forthwith cause such foreigner when apprehended to be produced before the officer issuing the warrant.

(4) When a foreigner for whose apprehension a warrant has been issued under sub-section (1) is produced or appears before the officers issuing such warrant, such officer may direct him to be detained in custody pending the orders of the Local Government, or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained.

(5) Any officer who has in accordance with the provisions of sub-section (4), ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the Local Government. On the receipt of a report under this sub-section the Local Government shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3.]

4. If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor General of India in Council or by the Local Government under whose order he shall have removed himself or been removed, such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor General of India in Council, or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the allies of Her Majesty, and of the neighbouring Princes and States.

Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained.

5. Whenever the Governor General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor General of India in Council, by a notification published in the Gazette of India, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act including this and the subsequent sections shall have full force and effect in British India or such part

Governor General may order all the provisions of this Act to be in force in British India or in any part thereof.

Proviso.

thereof as shall have been so specified. The Governor General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein: Provided that none of the provisions of this or the subsequent sections of this Act shall extend to any foreign minister duly accredited by his Government; to any consul or vice-consul; to any person under the age of fourteen years; or to any person in the service of Her Majesty.

Every foreigner to report his arrival in India in certain cases.

6. Every foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India, where all the provisions of this Act are not in force, shall if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports, by the Governor General of India in Council or by the Local Government of such place.

What to be stated in the report.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place. The report shall be recorded by the officer to whom it is made.

Foreigners, being masters of vessels or employed therein, to report themselves when they cease to be so employed.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners neglecting to report themselves, may be dealt with in like manner as foreigners travelling without a license.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

No foreigner to travel in India without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.



**11.** Licenses under this Act may be granted by the Governor General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government, as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor General of India in Council or by any of the Local Governments.

License by whom to be granted.

**12.** Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

What to be stated in license.

**13.** The license may be granted subject to such conditions as the Governor General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary. Any license may be revoked at any time by the Governor General of India in Council, or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force and in which the foreigner holding the same may be, or by the officer who granted the license.

License may be granted subject to conditions and may be revoked

**14.** If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any police-officer.

Foreigner travelling without or contrary to the conditions of license may be apprehended.

**15.** If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district. Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or pending the orders of such Government to be detained.

Procedure upon apprehension.

Magistrate to report to Government.

**16.** Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Persons apprehended, may be admitted to bail.

**17.** The Local Government of any part of British India in which all the provisions of this Act are for the time being in force may order any person apprehended or detained under the provisions of this Act

Removal of persons apprehended.

to remove himself from any such part of British India, by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit. The Governor General of India in Council may exercise all the powers given by this section to any Local Government.

Governor General may prohibit persons not being natural-born subjects from travelling or passing through any part of India without a license.

18. The Governor General of India in Council may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the <sup>1</sup>Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may, for the time being, be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order: and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner: and the Governor General of India in Council may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Also the Local Governments within their respective jurisdictions.

19. The Local Government of any presidency or place in which all the provisions of this Act may, for the time being, be in force, may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the <sup>1</sup>Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through such presidency or place or any part thereof, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order; and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner; and the Local Government may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

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<sup>1</sup> The Government of India Act, 1833 (3 & 4 Will IV, c. 85) is now repealed excepting s. 112 by the Government of India Act (9 & 10 Geo. 5, c. 101). For definition of "natural-born British Subject," see s. 1 of British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. V, c. 17), Coll. Stats., Ind., Vol. III.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may, for the time being, be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel; and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose; and the master or commander of such vessels shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid. If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

Certain officers may board vessels to ascertain whether foreigners are on board.

Master of vessel to furnish list of passengers, and to give information respecting them.

Foreigner refusing to give account of himself, not to be allowed to disembark.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

Penalty for false answer or report.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

Penalty for neglect by master of vessel to comply with requisitions of Act.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

Penalty for obstructing officers.

24. [*Fines imposed under this Act how to be recovered.*] Rep. by Act X of 1914.

25. The Governor General of India in Council, or the Local Government of any part of British India in which this Act may, for the time

Persons may be exempted from provisions of this Act.

being, be in force, may <sup>1</sup>exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption

ACT No. XV OF 1864<sup>2</sup>

[24th March, 1864.]

An Act to amend Act VIII of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*).

Preamble.

WHEREAS by Act VIII of 1851 (*for enabling Government to levy VIII of 1851 Tolls on Public Roads and Bridges*) authority was given for the levy

<sup>1</sup> For exemption under this section, see Gazette of India, 1914, Pt I, pp 1929 and 1905.

<sup>2</sup> Short title, "The Indian Tolls Act, 1864." See the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons to the Bill which was passed into law as Act 15 of 1864, see Gazette of India, 1864, p 120, and for Proceedings relating to the Bill, see *ibid*, Supplement, pp 89, 67, 77, 99 and 119.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), s 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B and O. Code, Vol. I, in the Central Provinces and the Sambalpur District by the Central Provinces Laws Act, 1875 (20 of 1875), O. P. Code. See also first foot-note to s. 3, *infra*.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur Code, Vol I, but its application to hill-tribes in a hill tract to which the Regulation applies has been barred by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), Bur. Code, Vol. I, and to Chins in the Chin Hills by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code, Vol. I.

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see C. M. S. Gazette, 1899, Pt I, p 41) and Mámbhum, and Pargana Dhálbhum and the Kollán in the District of Singbhum

See Gazette of India, 1881, Pt. I, p 501

The Districts of Hazáira, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (Portions of the Districts of Hazáira, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt I, p 857, and *ibid*, 1902, Pt I, p 575; but its application has been barred to that portion of the Hazáira District known as Upper Tanawal by the Hazáira (Upper Tanawal) Regulation, 1900 (3 of 1900), Punj and N-W Code)

The District of Lahaul

Ditto  
Ditto

1886, Pt I, p 46  
1886, Pt I, p 301

of certain rates of toll <sup>1</sup> \* \* \* , It is enacted as follows:—

1. [*Schedule of Act VIII of 1851 repealed and another schedule substituted.*] Rep. by s. 2 and Sch. I of Act 38 of 1920.

2. Any person entrusted with the management of the collection of tolls under <sup>2</sup> Act VIII of 1851 may in his discretion compound for any period not exceeding one year with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him, in lieu of the rates of toll <sup>3</sup> [authorized to be levied under the said Act VIII of 1851]. Collectors of tolls may compound for tolls leviable under Act VIII of 1851 or this Act.

3. The Local Government may extend this <sup>4</sup> Act to any place in which the said Act VIII of 1851 is in force; and the Local Government of any place in which the said Act VIII of 1851 is not in force may extend the said Act VIII of 1851 and this Act to such place.<sup>5</sup> Power to extend Act

4. For the purposes of this Act the words “Local Government” shall denote the person authorized by law to administer executive government in any part of the territories vested in Her Majesty by the Statute 21 and 22 Vict., cap. 106, entitled “An Act for the better government of India.” Interpretation-clause. Local Government.

[*Schedule*] Repealed by s. 2 and Sch. I of Act 38 of 1920.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled District of Coorg *See* Gazette of India, 1878, Pt. I, p. 45

The Act has been extended to Ajmer-Merwara along with Act 8 of 1851, *see* Gazette of India, 1889, Pt. II, p. 562; and to the Scheduled Districts in Vizagapatam and Ganjam, *see* Fort St. George Gazette, 1899, Pt. I, p. 1486, and *ibid*, 1900, Pt. I, p. 1101, respectively.

The Act is to be deemed to be and to have been in force in the Punjab, from the 24th March 1864, *see* the Indian Tolls Act, 1888 (8 of 1888), s. 1, and tolls levied or purporting to have been levied under the Act before the passing of Act 8 of 1888, are to be deemed to have been lawfully levied—*see* s. 3, *ibid*.

<sup>1</sup> Certain words were repealed by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>2</sup> *See Supra*

<sup>3</sup> These words and figures were substituted for the words “specified in the schedule to the said Act VIII of 1851 or in the schedule to this Act” by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>4</sup> The Act now regulating tolls in the Presidency of Bombay is the Tolls on Roads and Bridges Act (3 of 1875). That Act repealed Act 8 of 1851 in the Bombay Presidency, *see* s. 1, and declared that Act 15 of 1864 should be deemed to have been extended thereto as from the 30th July, 1864, *see* s. 2, Bom. Code, Vol. II.

<sup>5</sup> Both Acts have been extended to Oudh *See* Gazette of India, 1865, Pt. I, p. 777, and the Central Provinces (*ibid*, Pt. I, 1871, p. 611); and to Lower Burma, *see* Notification No 66, dated the 29th February, 1892, Bur. R. M.

<sup>6</sup> As to the authority of the Local Government in any part of British India not specified in s. 2 of the Indian Tolls Act, 1851 (8 of 1851), to which that Act and the Indian Tolls Act, 1864 (15 of 1864), may be or have been extended, *see* the Indian Tolls Act, 1888 (8 of 1888), s. 2 (1).

<sup>7</sup> *See* now “the Government of India Act”.

## THE CARRIERS ACT, 1865.

ACT No. III of 1865.<sup>1</sup>

[14th February, 1865.]

## Preamble.

## An Act relating to the rights and liabilities of Common Carriers.

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them

<sup>1</sup> For Statement of Objects and Reasons of the Bill which was passed into law as Act 3 of 1865, see Gazette of India Extraordinary, dated 1st August, 1864 and for Proceedings relating to the Bill, see *ibid*, Supplement, p. 497, and *ibid*, 1865, pp. 51, 64 and 65.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been applied to Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I, but its application to hill-tribes in a hill tract is barred by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), Bur. Code, Vol. I, and to Chins in the Chin Hills by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code, Vol. I. It has been applied to the Santhál Parganas, by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), s. 31, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh . . . . .	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpáiguri, the Western Hills of Dárljiling, the Dárljiling Tarái and the Damson Sub-division of the Dárljiling District . .	Ditto 1881, Pt. I, p. 74.
The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, <i>see</i> Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum . .	Ditto 1881, Pt. I, p. 504.
The Porahat Estate in the District of Singbhum . . .	Ditto 1897, Pt. I, p. 1059.
Kumáon and Garhwál . . .	Ditto 1876, Pt. I, p. 605.
The Scheduled portion of the Mizápur District . . .	Ditto 1878, Pt. I, p. 383.
Jaunsar Báwar . . . . .	Ditto 1878, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, <i>see</i> Gazette of India, 1901, Pt. I, p. 857, and <i>ibid</i> , 1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code) . . . . .	Ditto 1886, Pt. I, p. 48.

to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or against; It is enacted as follows:—

1. This Act may be cited as the Carriers Act, 1865.

Short title.

2. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

“common carrier” denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately:

“Common carrier.”

<sup>1</sup> “person” includes any association or body of persons, whether incorporated or not.

“Person.”

[*Number.*] Rep. by Act 10 of 1914.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.<sup>2</sup>

Carriers not to be liable for loss of certain goods above one hundred rupees in value, unless delivered as such.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix:

For carrying such property payment may be required at rates fixed by carrier.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business. |

Proviso.

The Scheduled Districts of the Central Provinces . . . See Gazette of India, 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam . . . Ditto 1898, Pt. I, p. 870.

The District of Sylhet . . . Ditto 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushái Hills) . . . Ditto 1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul—see Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely:—

The Taráí of the Province of

Agra . . . See Gazette of India, 1876, Pt. I, p. 505.

Ajmer and Merwara . . . Ditto 1877, Pt. I, p. 605.

It has been repealed as to carriers by rail by the Indian Railways Act, 1879 (4 of 1879). For the Indian Railways Act now in force, see the Indian Railways Act (9 of 1890).

<sup>1</sup> Cf. definition in s. 3 (39) of the General Clauses Act, 1897 (10 of 1897).

<sup>2</sup> The earlier sections extend to India the principle embodied in the Carriers Act, 1830 (11 Geo. IV & 1 Wm. IV, c. 68). See Statement of Objects and Reasons quoted *supra*.

The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

In respect of what property liability of carrier not limited or affected by public notice. Carriers, with certain exceptions, may limit liability by special contract.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

Plaintiffs, in suits for loss damage, or

5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of <sup>1</sup> Act XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*) may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

<sup>2</sup>7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said <sup>1</sup>Act XXII of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the <sup>3</sup> criminal act of the carrier or any of his agents or servants <sup>4</sup> [and shall also be liable to the owner for loss or damage to any such property, other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants].

9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall

<sup>1</sup> See now the Land-Acquisition Act, 1894 (1 of 1894), s. 2.

<sup>2</sup> S. 7 (so far as it relates to railways) has been repealed by s. 72 of the Indian Railways Act, 1890 (9 of 1890).

The words "negligence or" were omitted by s. 2 of the Carriers (Amendment) Act, 1921 (13 of 1921).

<sup>4</sup> This portion was added by s. 2 of *ibid.*



not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

<sup>1</sup>[10. No suit shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.]

<sup>2</sup>[11. The Governor General in Council may, by notification in the Gazette of India, add to the list of articles contained in the Schedule to this Act, and the Schedule shall, on the issue of any such notification, be deemed to have been amended accordingly.]

non-delivery, not required to prove negligence or criminal act.

Notice of loss or injury to be given within six months.

Power to Governor General in Council to add to the Schedule.

### SCHEDULE.

Gold and silver coin.

Gold and silver in a manufactured or unmanufactured state.

Precious stones and pearls.

Jewellery.

Time-pieces of any description.

Trinkets.

Bills and hundis.

Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English or Foreign.

Stamps and stamped paper.

Maps, prints, and works of art.

Writings.

Title-deeds.

Gold or silver plate or plated articles.

Glass.

China.

Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.

Shawls and lace.

Cloths and tissues embroidered with the precious metals or of which such metals form part.

Articles of ivory, ebony or sandal wood.

<sup>3</sup>[Art pottery and all articles made of marble.

Furs.

Government securities.

Opium.

Coral.

Musk, *Itr*, Sandal wood oil, and other essential oils used in the preparation of *itr* or other perfumes.

<sup>1</sup> Section 10 was added by s. 2 of the Indian Carriers Act, 1899 (10 of 1899). The original section was repealed by the Indian Railways Act, 1890 (9 of 1890).

<sup>2</sup> Section 11 was added by s. 3 of the Carriers (Amendment) Act, 1921 (13 of 1921).  
<sup>3</sup> Added by Notification No. 5299, dated 14th October 1922, see Gazette of India, 1922, Pt. I, p. 1235.

Musical and scientific instruments.

Feathers.

Narcotic preparations of hemp.

Crude India—rubber.

Jade, Jade—stone and amber.

Gooroochand or Gooroochandán.

Cinematograph films and apparatus.

Zahir Mohra Khatai].

## THE PÁRSÍ MARRIAGE AND DIVORCE ACT, 1865.

ACT No. XV OF 1865<sup>1</sup>.

[7th April, 1865.]

An Act to define and amend the law relating to Marriage and Divorce among the Pársís.

### Preamble.

WHEREAS the Pársi Community has represented the necessity of de-

<sup>1</sup> For Statement of Objects and Reasons of the Bill which was passed into law as Act 15 of 1865, see Gazette of India, 1865, p. 99; for discussions on the Bill, see *ibid*, Supplement, pp. 44, 110 and 113.

This Act has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It was declared in force in British Baluchistan by s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See Gazette of India, 1880, Pt. I, p. 672.
West Jálpaiguri District . . .	Ditto 1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kollán in the District of Singbhum . . .	Ditto 1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam . . .	Ditto 1881, Pt. I, p. 870.
The Scheduled portion of the Mirzápur District . . .	Ditto 1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto 1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and <i>ibid</i> , 1902, Pt. I, p. 575; but its application to that part of the Hazára District, known as Upper Tanawal, is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code)	Ditto 1886, Pt. I, p. 48.
The District of Sylhet . . .	Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . . .	Ditto 1897, Pt. I, p. 299.

## (I.—Preliminary. II.—Of Marriages between Pársís.)

fining and amending the law relating to marriage and divorce among Pársís; And whereas it is expedient that such law should be made conformable to the customs of the said community; It is enacted as follows:—

*I.—Preliminary.*

1. This Act may be cited as the Pársí Marriage and Divorce Act, 1865. Short title.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

[*Number.*] Rep. by Act 10 of 1914.

“priest” means a Pársí priest and includes Dastur and Mobed: “Priest.”

“marriage” means a marriage between Pársís whether contracted before or after the commencement of this Act; and “husband” and “wife” respectively mean a Pársí husband and a Pársí wife: “Marriage.”  
“Husband”  
and “wife”.

“section” means a section of this Act: “Section.”

“Chief Justice” includes Senior Judge: “Chief Jus-  
tice.”

“Court” means a Court constituted under this Act: “Court.”

“British India” means the territories which are or shall be vested in Her Majesty or Her successors by the <sup>2</sup> Statute 21 and 22 Vict., cap. 106, entitled “An Act for the better government of India;” “British India.”

21 & 22 Vict.,  
c. 106.

And, in any part of British India in which this Act operates “Local Government” means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor General of India in Council, and when such officer shall be authorized to exercise the powers, vested by this Act in a Local Government; and “Local Gov-  
ernment.”

“High Court” means the highest Civil Court of appeal in such part. “High Court.”

*II.—Of Marriages between Pársís.*

3. No marriage contracted after the commencement of this Act shall be valid if the contracting parties are related to each other in any of the Requisites  
to validity of  
Pársí mar-  
riages.

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul, *see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely:—

Kumaon and Garhwal	<i>See</i> Gazette of India, 1876, Pt. I, p. 606.
The Taráí of the Province of	
Agra	Ditto 1876, Pt. I, p. 505.
Ajmer-Merwara	Ditto 1909, Pt. II, p. 1314.

and under ss. 5 and 5A to Upper Burma (except the Shan States), *see* Gazette of India, 1907, Pt. I, p. 594.

<sup>1</sup> Cf. definition of “British India” in s. 18 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), Coll. Stats. Ind., Vol. II, and in s. 3 (7) of the General Clauses Act, 1897 (10 of 1897).

<sup>2</sup> “The Government of India Act, 1858” (21 and 22 Vict., c. 106), is now repealed excepting s. 4.

<sup>3</sup> Cf. definition in s. 3 (29), General Clauses Act, 1897 (10 of 1897).

<sup>4</sup> Cf. definition in s. 3 (24) *ibid.*

## (II.—Of Marriages between Pársis.)

degrees of consanguinity or affinity prohibited among Pársis and set forth in a table which the Governor General of India in Council shall,

<sup>1</sup> The following table was published in the Gazette of India of the 9th September, 1865, pp. 981, 982:—

TABLE.

*A man shall not marry his—*

- |  |  |
|--|--|
| 1. Paternal Grand-father's mother.   | 17. Wife of son or step-son, or of any direct lineal descendant of a son or step-son.                                    |
| 2. Paternal grand-mother's mother.   | 18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter. |
| 3. Maternal grand-father's mother.   | 19. Mother of daughter's husband.  |
| 4. Maternal grand-mother's mother.   | 20. Mother of son's wife.  |
| 5. Paternal grand-mother.  | 21. Mother of wife's paternal grand-father.  |
| 6. Paternal grand-father's wife.   | 22. Mother of wife's paternal grand-mother.  |
| 7. Maternal grand-mother.  | 23. Mother of wife's maternal grand-father.  |
| 8. Maternal grand-father's wife.   | 24. Mother of wife's maternal grand-mother.  |
| 9. Mother or step-mother.  | 25. Wife's paternal grand-mother.  |
| 10. Father's sister or step-sister.  | 26. Wife's maternal grand-mother.  |
| 11. Mother's sister or step-sister.  | 27. Wife's mother or step-mother.  |
| 12. Sister or step-sister.   | 28. Wife's father's sister.  |
| 13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother. | 29. Wife's mother's sister.  |
| 14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.     | 30. Father's brother's wife.   |
| 15. Daughter or step-daughter, or any direct lineal descendant of either.  | 31. Mother's brother's wife.   |
| 16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.                 | 32. Brother's son's wife.  |
|  | 33. Sister's son's wife.   |

*A woman shall not marry her—*

- |   |   |
|---|---|
| 1. Paternal grand-father's father.  | 18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son. |
| 2. Paternal grand-mother's father.  | 19. Father of daughter's husband.   |
| 3. Maternal grand-father's father.  | 20. Father of son's wife.   |
| 4. Maternal grand-mother's father.  | 21. Father of husband's paternal grand-father.  |
| 5. Paternal grand-father.   | 22. Father of husband's paternal grand-mother.  |
| 6. Paternal grand-mother's husband.   | 23. Father of husband's maternal grand-father.  |
| 7. Maternal grand-father.   | 24. Father of husband's maternal grand-mother.  |
| 8. Maternal grand-mother's husband.   | 25. Husband's paternal grand-father.  |
| 9. Father or step-father.   | 26. Husband's maternal grand-father.  |
| 10. Father's brother or step-brother.   | 27. Husband's father or step-father.  |
| 11. Mother's brother or step-brother.   | 28. Brother of husband's father.  |
| 12. Brother or step-brother.  | 29. Brother of husband's mother.  |
| 13. Brother's son or step-brother's son or any direct lineal descendant of a brother or step-brother.           | 30. Husband's brother's son, or his direct lineal descendant.   |
| 14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.              | 31. Husband's sister's son, or his direct lineal descendant.  |
| 15. Son or step-son, or any direct lineal descendant of either.   | 32. Brother's daughter's husband.   |
| 16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.      | 33. Sister's daughter's husband.  |
| 17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter. |   |

*Note.*—In the above table the words "brother" and "sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriages.

## (II.—Of Marriages between Pársis.)

after due enquiry, publish in the Gazette of India, and unless such marriage shall be solemnized according to the Pársi form of ceremony called “Asírvád” by a Pársi priest in the presence of two Pársi witnesses independently of such officiating priest; and unless, in the case of any Pársi who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

4. No Pársi shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his or her lawful divorce from such wife or husband, by sentence of a Court as hereinafter provided:

Re-marriage  
save after  
divorce un-  
lawful during  
lifetime of  
first wife or  
husband.

and every marriage contracted contrary to the provisions of this section shall be void.

5. Every Pársi who shall, after the commencement of this Act and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Punishment  
of bigamy.

XLV of 1860.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.

Certificate  
and registry  
of marriages.

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the Registrar of the place at which such marriage is solemnized.

The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

7. For the purposes of this Act a Registrar shall be appointed <sup>1\* \* \*</sup>

Appointment  
of Registrar.

Within the local limits of the ordinary original civil jurisdiction of a High Court the Registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government. Every Registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract.

Marriage-  
register to be  
open for  
public inspection

<sup>1</sup> The words “who may be the Registrar appointed under Act 16 of 1864 (to provide for the Registration of Assurances)” were repealed by the Repealing Act, 1870 (14 of 1870).

<sup>2</sup> For such Registrars see different Local Rules and Orders.

Every such register shall be evidence of the truth of the statements herein contained.

Transmission of certified copies of certificates in marriage-register to Registrar General of Births, Deaths and Marriages.

<sup>1</sup>[8A. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the <sup>2</sup>[Local Government, by which he was appointed] from time to time directs, send to the Registrar General of Births, Deaths and Marriages for the territories administered by <sup>3</sup>[such Local Government] a true copy certified by him, in such form as <sup>4</sup>[such Local Government] from time to time, prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.]

Penalty for solemnizing marriage contrary to section 4.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalty for priest's neglect of requirements of section 6.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Penalty for omitting to subscribe and attest certificate.

11. Every other person required by section 6 to subscribe or attest the said certificate, who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

Penalty for making, etc., false certificate.

12. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code, and shall be liable, on conviction thereof, to the penalties provided in section 466 of the said Code. XLV of 1861

Penalty for not registering certificate.

13. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for secreting, destroying or altering register.

14. Any person secreting, destroying or dishonestly or fraudulently altering the said register in any part thereof shall be punished with imprisonment of either description as defined in the Indian Penal Code XLV of 1861

<sup>1</sup> S. 8A was added by s. 31 of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

<sup>2</sup> These words were substituted for the words "Governor General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>3</sup> These words were substituted for the words "the Local Government by which he was appointed" by s. 2 and Sch. I of *ibid.*

<sup>4</sup> These words were substituted for the words "the Governor General" by s. 2 and Sch. I of *ibid.*

## (II.—Of Marriages between Pársis. III.—Of Pársi Matrimonial Courts.)

for a term which may extend to two years, or, if he be a Registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

## III.—Of Pársi Matrimonial Courts.

15. For the purposes of hearing suits under this Act, a <sup>1</sup>special Court shall be constituted in each of the presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

Constitution of special Courts under Act.

16. The Court so constituted in each of the presidency-towns shall be entitled the Pársi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be.

Pársi Chief Matrimonial Courts.

The local limits of the jurisdiction of a Pársi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Pársi District Matrimonial Court of such place.

Pársi District Matrimonial Court.

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act he shall be aided by seven delegates.

18. The Local Government may from time to time alter the local limits of the jurisdiction of any Pársi District Matrimonial Court, and may include within such limits any number of districts under its government.

Power to alter territorial jurisdiction of District Courts.

19. Any district which the Local Government, on account of the fewness of the Pársi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the <sup>2</sup>Pársi Chief Matrimonial Court for the territories under such Local Government where there is such Court.

Certain districts within jurisdiction of Chief Matrimonial Court.

<sup>1</sup> For notification constituting the Pársi Chief Matrimonial Court, see different Local Rules and Orders.

<sup>2</sup> Under this power the settlement of Aden and its dependencies have been included within the jurisdiction of the Pársi Chief Matrimonial Court of Bombay, see *ibid.*

For notification declaring all districts in the Madras Presidency where the Act is in force to be included within the jurisdiction of the Pársi Chief Matrimonial Court at Madras, see Mad. R. and O.

For notification including all districts in Upper Burma as well as those in Lower Burma within the jurisdiction of the Pársi Chief Matrimonial Court at Rangoon, see Burma Gazette, 1907, Pt. I, p. 918.

Court seal.

**20.** A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

Appointment of delegates.

**21.** The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

The persons so appointed shall be *Pársís*: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

Power to appoint new delegates.

**22.** The appointment of a delegate shall be for life.

But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being a *Pársí* to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette. XLV of 1869.

Delegates deemed public servants.

**23.** All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

Selection of delegates under sections 16 and 17 from those appointed under section 21.

**24.** The delegates selected under sections 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

Practitioners in Matrimonial Courts.

**25.** All advocates, vakils and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act, and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

Courts in which suits to be brought.

**26.** All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When defendant has left British India.

When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.



*(IV.—Of Matrimonial Suits.)**IV.—Of Matrimonial Suits.**(a) For a Decree of Nullity.*

**27.** If a Pársí at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage and still continues: In case of lunacy or mental unsoundness.

Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

**28.** In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void. In case of impotency.

*(b) For a Decree of Dissolution in Case of Absence.*

**29.** If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved. In case of absence for seven years.

*(c) For Divorce or Judicial Separation.*

**30.** Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground that his wife has since the celebration thereto been guilty of adultery; On ground of wife's adultery.

and any wife may sue that her marriage may be dissolved and a divorce granted on the ground that since the celebration thereof her husband has been guilty of adultery with a married or fornication with an unmarried woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence. On ground of husband's adultery, etc.

In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

**31.** If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into or allowed to remain in the place of abode of a wife Grounds of judicial separation.

by her own husband, she shall be entitled to demand a judicial separation.

Suits for  
divorce or  
judicial sep-  
aration.

**32.** In a suit for divorce or judicial separation under this Act, if the court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and  
that the husband and wife are not colluding together, and  
that the plaintiff has not connived at or been accessory to the said  
offence,

and that there has been no unnecessary or improper delay in insti-  
tuting the suit, and

that there is no other legal ground why relief should not be  
granted,

then and in such case, but not otherwise, the Court shall decree a  
divorce or judicial separation accordingly.

Alimony  
*pendente lite*.

**33.** In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her monthly or weekly during the suit such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

Permanent  
alimony.

**34.** The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries, during the time of such disobedience, for the price or value of such necessaries.

Payment of  
alimony to  
wife or her  
trustee.

**35.** In all cases in which the Court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

## (IV.—Of Matrimonial Suits.)

(d) *For Restitution of Conjugal Rights.*

36. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

Suit for  
restitution of  
conjugal  
rights.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Pársís, or any contract connected with or arising out of any such marriage, if at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

No suit to  
enforce  
marriage  
or contract  
arising out of  
marriage  
when  
husband  
under  
16, or wife  
under 14,  
years.  
Suits with  
closed doors.

38. In every suit preferred under this Act, the case shall be tried with closed doors, should such be the wish of either of the parties.

<sup>1</sup>[39. Notwithstanding anything contained in section 16 or section 17, where in the case of a trial in a Pársí Chief Matrimonial Court, not less than nine or, in the case of a trial in a Pársí District Matrimonial Court, not less than six delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegate or delegates.

Absence of  
delegates  
during trial.

Where at any stage of a trial in a Pársí Chief Matrimonial Court less than nine, or in a Pársí District Matrimonial Court less than six, delegates are present who have attended throughout the proceedings and the presiding Judge is of opinion that it is not possible without undue delay to secure the attendance throughout the proceedings of nine or six delegates, as the case may be, the proceedings shall be stayed and a new trial shall be held with the aid of fresh delegates.]

40. The provisions of the Code of Civil Procedure shall, so far as the same may be applicable, apply to suits instituted under this Act.

Civil Proce-  
dure Code  
applied.  
Determina-  
tion of ques-  
tions of law,  
procedure  
and fact.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates <sup>2</sup>[who have attended throughout the trial].

<sup>1</sup> Inserted by the Pársí Marriage and Divorce (Amendment) Act, 1922 (20 of 1922), s. 2.

<sup>2</sup> These words were substituted for the words "before whom the case is tried" by *ibid.*, s. 3 (1).

## (IV.—Of Matrimonial Suits. V.—Of the Children of the Parties.)

<sup>1</sup>[Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.]

Appeal to  
High Court.

**42.** An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground:

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to  
parties to  
marry again.

**43.** When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or

when any such appeal shall have been dismissed, or

when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.

## V.—Of the Children of the Parties.

Custody of  
children  
*pendente lite*.

**44.** In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree as it may deem just and proper, with respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

Orders as to  
custody of  
children after  
final decree.

and may, after the final decree upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

Settlement of  
wife's property  
for  
benefit of  
children.

**45.** In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the children of the marriage or any of them.

<sup>1</sup> The proviso was inserted by s. 3 (2), of the Parsi Marriage and Divorce (Amendment) Act, 1922 (20 of 1922).

## (VI.—Of the Mode of enforcing Penalties under this Act.)

## VI.—Of the Mode of enforcing Penalties under this Act.

46. All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

Cognizance of offences under Act.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

47. If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any Magistrate of Police<sup>1</sup> of the place at which such Court is held.

Punishment of offences under Act committed within local limits of High Court.

48. All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

Levy of fines by distress.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Procedure until return made to distress-warrant.

50. If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or

Imprisonment if no sufficient distress.

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

<sup>1</sup> The reference should now be read as to "Presidency Magistrate," see the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3.

VII.—Miscellaneous.

Rules of procedure of Parsi Matrimonial Courts to be made by High Court.

51.<sup>1</sup> Subject to the provisions contained or referred to in this Act, the High Court shall make such rules and regulations concerning the practice and procedure of the Parsi Chief and District Matrimonial Courts in the Presidency or Government in which such High Court shall be established, as it may from time to time consider expedient and shall have full power from time to time to revoke or alter the same.

All such rules, revocations and alterations shall be published in the official Gazette.

Power to invest chief executive officer with powers of Local Government.

52. The Governor General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government.

53. [*Commencement and extent of Act.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

SCHEDULE.

(See section 6.)

Date and place of marriage.	Names of the husband and wife.	Condition at the time of marriage.	Rank or profession.	Age.	Residence.	Names of the fathers or guardians.	Rank or profession.	Signature of the officiating priest.	Signatures of the witnesses.	Signature of father or guardian when husband or wife is an infant.

<sup>1</sup>For rules made under this section for the Parsi Chief and District Matrimonial Courts see different Local Rules and Orders.

## THE NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT, 1866.

ACT No. XXI OF 1866<sup>1</sup>.

[2nd April, 1866.]

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated on religious grounds by their wives or husbands; It is enacted as follows:—

1. This Act may be cited as the Native Converts' Marriage Dissolution Act, 1866.

<sup>1</sup>For Statement of Objects and Reasons to the Bill which was passed into law as Act, 21 of 1866, see Gazette of India, 1865, p. 59; for the Report of the Select Committee, see *ibid*, 1866, p. 163 and for discussions on the Bill, see *ibid*, 1865, Supplement, p. 5, and 1866, Supplement, p. 201.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874).

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), as amended by Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri	Ditto 1881, Pt. I, p. 74.
The District of Dárljiling	Ditto 1886, Pt. I, p. 500.

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhūm, and Pargana Dhálbhūm and the Kolhán in the District of Singhbhum	Ditto	1881, Pt. I, p. 504.
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The Porahat Estate in the Singhbhum District	Ditto	1897, Pt. I, p. 1059.
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The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1893, Pt. I, p. 870.
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The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
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Jaunsar Bāwar	Ditto	1879, Pt. I, p. 382.
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The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismaíl Khán and Dera Gházi Khán. (Portions of the Districts of Hazára, Bannu, Dera Ismaíl Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code)

Ditto	1886, Pt. I, p. 48.
Ditto	1879, Pt. I, p. 631.

The District of Sylhet	Ditto	1879, Pt. I, p. 631.
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The rest of Assam (except the North Lusháí Hills)	Ditto	1897, Pt. I, p. 299.
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The District of Lahaul	Ditto	1886, Pt. I, p. 301.
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2. [*Commencement of Act.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Interpreta-  
tion-clause.  
"Native  
husband."

3. In this Act—

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew;

"Native  
wife."

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess;

"Native  
law."

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews:

"Month"  
and "year."

"month" and "year" shall respectively mean month and year according to the British calendar:

"High  
Court."

"High Court" shall mean the highest Civil Court of appeal in any place to which this Act extends:

[*Number.*] *Rep. by Act 10 of 1914.*

When  
convert  
deserted by  
his wife  
may sue for  
conjugal  
society.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When  
convert  
deserted by  
her husband  
may sue.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband for the space of six continuous months desert or repudiate her, she may sue him for conjugal society.

Court in  
which suit  
shall be  
brought.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Suit to be  
commenced  
by verified  
petition.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

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It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumaon and Garhwāl . . . *See Gazette of India, 1876, Pt. I, p. 606.*

The Tarāi of the Province of

Agra . . . . .

Ditto

1876, Pt. I, p. 505.

It has been declared in force in British Baluchistan under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), *see Bal. Code.*



The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition<sup>1</sup> may be amended by permission of the Court.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge. On service of petition, citation to respondent.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow. Form of citation.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure, as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act. Service of citation.

11. If the respondent shall not obey such citation and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Penalty on respondent not obeying citation.

**XLV of 1860. Indian Penal Code.**

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved— Points to be proved on appearance of petitioner.

- (1) the identity of the parties:
- (2) the marriage between the petitioner and the respondent:
- (3) that the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:
- (4) the desertion or repudiation of the petitioner by the respondent:
- (5) that such desertion or repudiation was in consequence of the petitioner's change of religion:
- (6) and that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal. First interrogation of respondent.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge, but when the respon-

<sup>1</sup> The words "shall bear a stamp of two rupees, and," were repealed by the Court-fees Act, 1870 (7 of 1870), Sch. III.

dent is exempt by law from personal appearance in Court, or when the Judge shall in his discretion excuse the respondent from such appearance, the interrogations shall be made by commissioners acting under such commission as hereinafter mentioned.

Interrogations  
by Judge  
may be public  
or private.

**14.** Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure  
when female  
respondent  
refuses to  
cohabit with  
petitioner.

**15.** If the respondent be a female and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim the parties shall, at such place and time as he shall deem convenient have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Adjournment  
for a year.

Interview.

Procedure on  
expiration of  
adjournment.

**16.** At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to, and if the points mentioned in section 12 and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner;

Interrogation  
of respondent.

Decree.

and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Decree in  
case of male  
respondent  
refusing to  
cohabit on  
grounds of  
petitioner's  
change of  
religion.

**17.** If the respondent be a male and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Provided that if the petitioner shall so desire (but not otherwise), Proviso. the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to section 13 of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re-marriage shall be legitimate, any Native law to the contrary notwithstanding :

Liberty to parties to marry again.

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females, or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

Judge to order commission to issue for examination of exempted persons.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Civil Procedure Code applied.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are co-

Dismissal of suit if either party under age required by Act, or if parties co.

habiting, or respondent willing to cohabit.

habiting as man and wife, or the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

**24.** If, at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and, upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in section 16 of this Act.

Petitioner's cruelty or adultery to bar suit.

**25.** If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

**26.** If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in section 24 of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or right of children.

**27.** A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

**28.** If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall

think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

No appeal under Act, but Judge may state case raising question whether conversion has dissolved marriage.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to state necessary facts and documents, and suit to be stayed.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

Case to be decided by three Judges.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

High Court may refer case to Judge for additions or alterations.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

High Court may decide question raised, and Judge shall dispose of case accordingly.

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

34. Nothing contained in this Act shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church

Saving of Roman Catholic marriage.

<sup>1</sup> The words and figures, "or in Acts Nos. XXV of 1864 and V of 1865" and the words "and no Clergyman of such Church shall be liable to any suit or penalty under the provisions of either of the two Acts last hereinbefore mentioned, for solemnizing any such marriage," were repealed by the Repealing Act, 1874 (16 of 1874).

Extent of  
Act. 1

35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the 'Statute 21 & 22 Vict., cap. 106, entitled "An Act for the better government of India,"

2\*   \*   \*   \*   \*

### THE FIRST SCHEDULE.

(See section 7.)

#### FORM OF PETITION.

Stamp.

\* \* 3

To the Judge of the Civil Court of      day of      18 .  
The      The

The petition of A. B. of

Sheweth:—

1. That your petitioner was born on or about the      day of      18 .
2. That your petitioner was on the      day of      18 in the year 18  
lawfully married to C. D. at
3. That the said C. D. is now of the age of      years or thereabouts.
4. That after his said marriage, your petitioner lived and cohabited with his  
said wife at      aforesaid until the      day of      18 .
5. That previous to the      day of      18 your petitioner changed  
his religion for Christianity, and that on such day he was baptised and became a  
member of the Church of
6. That on the      day of      18 [at least six months prior to the date of  
the petition], the said C. D. deserted your petitioner, and has not since resumed co-  
habitation with him.
7. That such desertion was in consequence of your petitioner's said change of  
religion.
8. That there is no collusion nor connivance between your petitioner and the  
said C. D.

Your petitioner therefore prays that Your Honour will order the said C. D. to  
live and cohabit with your petitioner, or declare that your petitioner's marriage is  
dissolved.

A. B.

#### Form of verification.

I, A. B., the petitioner named in the above petition, do declare that what is  
stated therein is true to the best of my information and belief.

### THE SECOND SCHEDULE.

(See section 9.)

#### FORM OF CITATION IN ORDINARY CASES.

To C. D. of

Whereas A. B. of      , claiming to have been lawfully married to you, the  
said, C. D., has filed his [or her] petition against you in the Civil Court of      ,  
alleging that you, the said C. D., have deserted him [or her] for six months in conse-

<sup>1</sup> "The Government of India Act, 1858" (21 and 22 Vict., c. 106), is now re-  
pealed except s. 4, see Coll. Stats., Ind., Vol. I. See now the Government of India  
Act.

<sup>2</sup> The remainder of this section, dealing with the power of the Governor General  
in Council to extend the Act, etc., was repealed by the Repealing Act, 1874 (16 of  
1874) and the Repealing Act, 1891 (12 of 1891).

<sup>3</sup> The words "Rs. two" printed below the word "stamp" were repealed by the  
Repealing and Amending Act, 1891 (12 of 1891).

1866: Act XXI.] *Dissolution of Native Convert's Marriages.* 193

1866: Act XXV.] *Unclaimed Deposits.*

quence of his [or her] having changed his [or her] religion for Christianity and praying that, unless you consent to live and cohabit with him [or her], it may be declared that his [or her] marriage is dissolved: Now this is to command you that, at the expiration of days [at least one month] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to XLV of 1860. punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) E. F.,  
Judge of the Civil Court of .

(Indorsement to be made after service.)

This citation was duly served by G. H. on the within-named C. D. of at  
on the day of 18 .

(Signed) G. H.

### THE THIRD SCHEDULE.

(See section 9.)

FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT.  
To C. D. of

Whereas A. B. of , claiming to have been lawfully married to you, the said C. D., has filed his [or her] petition against you in the Civil Court of , alleging that you, the said C. D., have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to cohabit with him [or her], it may be declared that his [or her] marriage is dissolved: Now this is to command you that, at the expiration of days [at least one month] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorized in that behalf under a commission issued by this Court in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 XLV of 1860. of the Indian Penal Code.

Dated the day of 18 .

(Signed) E. F.,  
Judge of the Civil Court of .

(Indorsement to be made after service.)

This citation was duly served by G. H. on the within-named C. D. of  
at on the day of 18 .

(Signed) G. H.

### ACT No. XXV OF 1866.<sup>1</sup>

[11th July, 1866.]

An Act to transfer to the Government of India certain securities

<sup>1</sup> Short title, "The Unclaimed Deposits Act, 1866." See the Indian Short Titles Act, 1897 (14 of 1897), Gazette of India, 1866, p. 890 and for Proceedings in Council relating to the Bill, see *ibid*, Supplement, p. 304.

and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay <sup>1</sup>\* \* \*.

Preamble.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras and Bombay, <sup>1</sup>\* \* \* in the course of suits in the said Courts or in the late Supreme Courts at Calcutta, Madras and Bombay, respectively, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of Government; <sup>1</sup>\* \* \* It is hereby enacted as follows:—

Money deposited in High Courts and unclaimed for twenty years transferred to Government.

1. All securities and sums of money deposited in the said High Courts <sup>1</sup>\* \* \* or any of them, in the course of suits in any of the said Courts or of the late Supreme Courts of Calcutta, Madras and Bombay, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of Government.

2. [*Proceeds of estates administered under order of Supreme Court of Straits Settlements or in charge of Administrator General of Bengal.*] *Rep. by the Administrator General's Act, 1867 (XXIV of 1867), and the Repealing Act, 1874 (XVI of 1874).*

Transfer not made pending suits.

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money or proceeds as aforesaid, pending any suit already instituted or which shall hereafter be instituted in respect thereof.

Repayment on subsequent establishment of claim.

4. If any claim shall hereafter be made to any part of the securities, money or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall, in the case of securities and money transferred and paid under section 1 of this Act, be established to the satisfaction of the High Court <sup>1</sup>\* \* \* from which the transfer shall have been made, <sup>1</sup>\* \* \* the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the <sup>2</sup> claimant <sup>1</sup>\* \* \*.

<sup>1</sup> The portions of this Act which referred to the Administrator General of Bengal, which were repealed by the Administrator General's Act, 1867 (24 of 1867), and the Repealing Act, 1876 (12 of 1876), and those which referred to the Supreme Court of the Straits Settlements, which were repealed by the Repealing Act, 1874 (16 of 1874), and by Act 12 of 1876, have been omitted.

<sup>2</sup> As to the costs of petitions under this section, see the Unclaimed Deposits Act, 1870 (5 of 1870).



## THE INDIAN TRUSTEES ACT, 1866.

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 ACT No. XXVII OF 1866.<sup>1</sup>

[24th October, 1866.]

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees, in cases to which English law is applicable; It is hereby enacted as follows:—

Preamble.

1. [*Repeal of Act.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. <sup>2</sup>In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

“Immoveable property” shall extend to and include messuages, “Immove-

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<sup>1</sup>The Statement of Objects and Reasons for the Bill which was passed into law as Act 27 of 1866 is not published; for discussions on the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494 and 531.

This Act is mainly founded on “the Trustee Act, 1850” (13 & 14 Vict., c. 60), and “the Trustee Act, 1852” (15 & 16 Vict., c. 55).

In the North-West Frontier Province, the High Court of Judicature at Lahore is the High Court in respect of Proceedings under this Act, see s. 6 (c) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab & N.-W. Code.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see *Calcutta Gazette*, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. See *Gazette of India*, 1881, Pt. I, p. 504.

<sup>2</sup> Cf. 13 & 14 Vict., c. 60, s. 2.



such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge, as the case may be, to entertain applications and make orders under this Act:

“trust” shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words “trust” and “trustee” shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person:

“lunatic” shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs:

“person of unsound mind” shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

in the case of a will made or an intestacy occurring before the first day of January, 1866, “heir” shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property: and “devisee” shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent.

In the case of a will made or an intestacy occurring on or after the first day of January, 1866, “heir” shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate’s estate; and “devisee” shall mean any person taking immoveable property under a bequest, and any person other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession:

“mortgage” shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money:

“person” shall include any company or association, or body of persons whether incorporated or not:

<sup>1</sup>The day on which the Indian Succession Act, 1865 (10 of 1865), came into force. This Act has been repealed by the Indian Succession Act, 1925 (39 of 1925).

[*Number. Gender.*] *Rep. by Act 10 of 1914.*

High Court  
to have  
jurisdiction  
in what  
cases.

3. The powers and authorities given by this Act to the High Court shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

High Court  
may convey  
estates of lu-  
natic trustees  
and mortga-  
gees ;

4.<sup>1</sup> When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.

and may  
convey  
contingent  
rights.

5.<sup>2</sup> When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said High Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

High Court  
may transfer  
stock or Gov-  
ernment secu-  
rities of luna-  
tic-trustees  
and mortga-  
gees.

6.<sup>3</sup> When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities or to anything in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action or any interest in respect thereof:

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.

Power to  
transfer

7.<sup>4</sup> When any stock or Government securities shall be standing in

<sup>1</sup> *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 3.

<sup>2</sup> *Cf. ibid.*, s. 4.

<sup>3</sup> *Cf. ibid.*, s. 5.

<sup>4</sup> *Cf. ibid.*, s. 6.

the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

8.<sup>1</sup> Whenever any minor<sup>2</sup> shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.

9.<sup>3</sup> Where any minor shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

10.<sup>4</sup> When any person solely holding any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.

11.<sup>5</sup> When any person or persons shall hold any immoveable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.

<sup>1</sup> Cf. 13 & 14 Vict., c. 60, s. 7.

<sup>2</sup> For definition of minor, see the Indian Majority Act, 1875 (9 of 1875).

<sup>3</sup> Cf. 13 & 14 Vict., c. 60, s. 8.

<sup>4</sup> Cf. *ibid.*, s. 9.

<sup>5</sup> Cf. *ibid.*, s. 10.

Contingent  
rights of  
trustees.

12.<sup>1</sup> When any person solely entitled to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

High Court  
may make or-  
der where  
persons joint-  
ly entitled  
with others  
out of juris-  
diction to  
contingent  
right in im-  
moveable  
property.

13.<sup>2</sup> When any person jointly entitled with any other person or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

When un-  
certain which  
of several  
trustees  
survived.

14.<sup>3</sup> Where there shall have been two or more persons jointly holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.

When uncer-  
tain whether  
last trustee  
living or  
dead.

15.<sup>4</sup> Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.

When trustee  
dies without  
heir.

16.<sup>5</sup> When any person holding any immoveable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as

<sup>1</sup> Cf. 13 & 14 Vict., c. 60, s. 11.

<sup>2</sup> Cf. *ibid.*, s. 12.

<sup>3</sup> Cf. *ibid.*, s. 13.

<sup>4</sup> Cf. *ibid.*, s. 14.

<sup>5</sup> Cf. *ibid.*, s. 15.



the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.

17.<sup>1</sup> When any immoveable property is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property. Contingent, right of unborn trustee.

18.<sup>2</sup> In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate, as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate. Power to make order for vesting estate on refusal or neglect of trust to convey or release.

19.<sup>3</sup> When any person to whom any immoveable property has been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, that is to say,— Power to convey in place of mortgagee.

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found:

<sup>1</sup> Cf. 13 & 14 Vict., c. 60, s. 6.

<sup>2</sup> Cf. the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 2. [Sections 1 to 5, and ss. 8 and 9 of this Act, together with the residue, have been repealed, except as to lunacy jurisdiction in Ireland, by (56 & 57 Vict., c. 53), s. 51].

<sup>3</sup> Cf. "the Trustee Act, 1850" (13 & 14 Vict., c. 60), s. 19.

when an heir or devisee of such mortgagee shall upon a demand by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

when it shall be uncertain which of several devisees of such mortgagee was the survivor:

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead:

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died and it shall not be known who is his heir or devisee:

And the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.

Power to appoint person to convey in certain cases.

20.<sup>1</sup> In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right;

and the conveyance, or release or disposition of the person so appointed shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would, in the particular case, have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer or join in transferring the stock to the person or persons to be named in the order;

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<sup>1</sup> *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 20.

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

21.<sup>1</sup> When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

When trustees of stock or Government securities joined with trustees out of jurisdiction.

When any sole trustee of any stock, Government securities or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

22.<sup>2</sup> Where any sole trustee of any stock, Government securities or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

When trustee of stock, etc., refuses to transfer.

23.<sup>3</sup> Where any one of the trustees of any stock, Government securities or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person, absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High

When one of several trustees of stock, etc., refuses to transfer or receive and pay over dividends.

<sup>1</sup> Cf. 13 & 14 Vict., c. 60, s. 22.

<sup>2</sup> Cf. *ibid.*, s. 23.

<sup>3</sup> Cf. *ibid.*, s. 24.

Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.

When stock, etc., standing in name of deceased person.

24.<sup>1</sup> When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

Effect of order vesting legal right to transfer stock, etc.

25.<sup>2</sup> Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order.

Obligation to comply with requisitions of person invested.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the persons in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made..

Indemnity.

Termination of powers of person replaced.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company or association, or any person having re-

<sup>1</sup> Cf. 13 & 14 Vict., c. 60, s. 25.

<sup>2</sup> Cf. *ibid.*, s. 26.

ceived such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities, or the payment of the dividends, interest or income thereof.

26.<sup>1</sup> Where any order shall have been made under this Act by the High Court vesting the legal right to sue for or recover anything in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed, to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.

Effect of order vesting legal right in thing in action.

27.<sup>2</sup> Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

On neglect to transfer stock etc., for twenty-eight days order made vesting right to transfer in such person as Court appoints.

28.<sup>3</sup> When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

Similar order on like neglect by executor.

29.<sup>4</sup> When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly;

Legal right to transfer stock to vest in person appointed by High Court.

<sup>1</sup> Cf. 13 & 14 Vict., c. 60, s. 27.

<sup>2</sup> Cf. the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 4.

<sup>3</sup> Cf. *ibid.*, s. 5.

<sup>4</sup> Cf. *ibid.*, s. 6.

Powers of person appointed.

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order.

Obligation to comply with his requisitions.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

Power to make order for transfer, or receipt of dividends, of stock, etc., in name of minor-trustee.

30.<sup>1</sup> When any minor shall be solely entitled to any stock or Government securities upon any trust it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof.

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities, upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.

When decree made for sale of immoveable property for payment of debts.

31.<sup>2</sup> When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act;

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.

Holding immoveable property the sale of which has been ordered by High Court.

32.<sup>3</sup> When any decree or order shall have been made by the High Court whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such

<sup>1</sup> Cf. the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 3.

<sup>2</sup> Cf. the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 29. S. 31 is repealed in places to which the Transfer of Property Act, 1882 (4 of 1882), extends or is extended—see s. 2 of latter Act.

<sup>3</sup> Cf. the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 1.

decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

In every such case it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.

Effect of order.

33.<sup>1</sup> Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Court to declare what parties are trustees of immoveable property comprised in suit, and as to interests of persons unborn.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights and interests of trustees born or unborn.

34.<sup>2</sup> It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

Power to direct how right to transfer stock shall be exercised.

35.<sup>3</sup> In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing a new trustee

Power to Court to make order appointing new trustees.

<sup>1</sup> *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 30

<sup>2</sup> *Cf. ibid.*, s. 31.

<sup>3</sup> *Cf. ibid.*, s. 32

or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and, if there be such trustee or trustees, either in substitution for or in addition to him or them.

**Powers of new trustees.**

<sup>1</sup>The person or persons who upon the making of such order shall be trustee or trustees shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

**Power to Court to vest immoveable property in new trustee.**

**36.<sup>2</sup>** It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any immoveable property subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the Court shall direct.

Such order shall have the same effect as if the person or persons who, before such order, was or were the trustee or trustees (if any) had duly executed all proper conveyances of such property for such estate.

**Power to Court to vest right to sue in new trustee.**

**37.<sup>3</sup>** It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust, or to receive the dividends, interest or income thereof, or to sue for or recover anything in action subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees.

**Old trustees not discharged from liability.**

**38.<sup>4</sup>** Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

**Who may apply.**

**39.<sup>5</sup>** An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or new trustees, or concerning any immoveable property, stock or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof, and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.

<sup>1</sup> *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 33.

<sup>2</sup> *Cf. ibid.*, s. 34.

<sup>3</sup>, <sup>4</sup> & <sup>5</sup> *Cf. ibid.*, ss. 34, 36 and 37, respectively.



40.<sup>1</sup> When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court; and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

Application  
may be by  
petition.

41.<sup>1</sup> Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons.

What may be  
done upon  
petition.

42.<sup>1</sup> Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.

Court may  
dismiss peti-  
tion with or  
without  
costs.

43.<sup>1</sup> Whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act.

Power to  
make order  
in cause.

44.<sup>1</sup> Whenever any order shall be made under this Act by the High Court, for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order:

Orders by  
High Court  
founded on  
certain alle-  
gations con-  
clusive  
evidence  
of matter  
contained  
therein.

Provided always that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable property con-

Powers as to  
re-conveyance  
of immove-

<sup>1</sup> Cf. the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 40, 41, 42, 43 and 44, respectively.

able  
property, etc. veyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right to pay any costs occasioned by the order under this Act when the same shall appear to have been improperly obtained.

Trustee of  
charity.

45.<sup>1</sup> It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court.

Money of  
minors and  
persons of  
unsound  
mind to be  
paid into  
Court.

46.<sup>1</sup> Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities or thing in action conveyed or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or disposition of the said Court;

and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof as to the said Court shall seem reasonable.

Court may  
make decree  
in absence  
of trustee.

47.<sup>1</sup> Where in any suit commenced or to be commenced in the High Court it shall be made to appear to the Court that diligent search and enquiry have been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause:

Decree not  
effective  
without ser-  
vice of pro-  
cess.

Provided always that no such decree shall bind, affect or in any wise prejudice any person against whom the same shall be made without service of process upon him as aforesaid, his heirs, executors or administrators, for or in respect of any estate, right or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.

<sup>1</sup> Cf. the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 45, 48 and 49, respectively.

48.<sup>1</sup> Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed or a transfer made by the person or persons holding such property or entitled to such stock, Government securities or thing in action.

Orders under Act chargeable with same stamp-duty as deeds of conveyance.

Every such order shall be duly stamped for denoting the payment of the said duty.

49.<sup>2</sup> The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper.

Costs may be paid out of estate.

50.<sup>3</sup> Upon any petition being presented under this Act to the High Court, concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

Power to order enquiry concerning person of unsound mind.

Such order shall have the same effect as the like order made under section 1 of 'Act XXXIV of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act.

Effect of order.

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded.

Postponement of order pending enquiry.

51.<sup>5</sup> Upon any petition under this Act being presented to the High Court it shall be lawful for the said Court to postpone making any order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

Suit may be directed.

52.<sup>6</sup> Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.

Indemnity to persons obeying orders under Act.

<sup>1</sup> Cf. the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 13 which has since been repealed by the Statute Law Revision Act, 1892.

<sup>2, 3</sup> & <sup>4</sup> Cf. the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 51, 52 and 53, respectively.

<sup>4</sup> Act XXXIV of 1858 has been repealed by the Indian Lunacy Act, 1912 (IV of 1912).

<sup>6</sup> Cf. the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 7.

Execution  
and effect  
of orders.  
Short title.

53. Any order made by the High Court under this Act shall have the same effect and be executed in the same manner as a decree.

54. This Act may be cited as the Indian Trustee Act, 1866.

55. [*Application of Act to Straits Settlements.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

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## THE TRUSTEES' AND MORTGAGEES' POWERS ACT, 1866.

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 ACT No. XXVIII OF 1866.<sup>1</sup>

[24th October, 1866.]

An Act to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of property and relieve Trustees.

## Preamble.

WHEREAS it is expedient that in cases to which English law is applicable certain powers and provisions usually inserted in settlements, mortgages, wills and other instruments should be made incident to the estates of the persons interested, so as to dispense with the necessity of

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<sup>1</sup> The Statement of Objects and Reasons of the Bill which was passed into law as Act 28 of 1866 has not been published; for Proceedings in Council relating to the Bill, see Gazette of India, 1866, Supplement, pp. 416, 417, 494 and 531.

In the North-West Frontier Province the High Court of Judicature at Lahore is the High Court in respect of Proceedings under this Act, see s. 6 (c) of the North-West Frontier Province Laws and Justice Regulation, 1901 (7 of 1901). Punj. & N.-W. Code.

inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows:—

1. In the construction of this Act, unless there be something repugnant in the subject or context,—

“Immoveable property” shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth: Interpretation-clause.  
“Immoveable property.”

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, the Western Hills of Dārjiling, the Dārjuling Tarāi and the Damsion Sub-division of the Dārjiling District . . . . .	See Gazette of India, 1881, Pt. I, p. 74.
The Districts of Hazāribāgh, Lohārdāga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mānbhum, and Pargana Dhālbhum and the Kolhan in the District of Singhbhum . . . . .	Ditto 1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam . . . . .	Ditto 1898, Pt. I, p. 870.
The Scheduled portion of the Mirzāpur District . . . . .	Ditto 1879, Pt. I, p. 383.
Jaunsar Bāwar . . . . .	Ditto 1879, Pt. I, p. 382.
The Districts of Hazara, Peshāwar, Kohāt, Bannu, Dera Ismail Khān and Dera Ghāzi Khān. (portions of the Districts of Hazara, Bannu, Dera Ismail Khān and Dera Ghāzi Khān and the Districts of Peshāwar and Kohāt, now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 87; and ibid, 1902, Pt. I, p. 575, but its application to that part of the Hazara District, known as Upper Tanawal, is barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Panj. and N.-W. Code). . . . .	Ditto 1886, Pt. I, p. 48.
The District of Sylhet . . . . .	Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushāi Hills) . . . . .	Ditto 1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled Districts of Lahaul. See Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act to the Scheduled Districts of Kumāon and Garhwāl. See Gazette of India, 1876, Pt. I, p. 606.

This Act is based on “the Law of Property Amendment Act, 1859” (22 & 23 Vict., c. 35), and 23 & 24 Vict., c. 145. This Act has since been repealed by 44 & 45 Vict., c. 41, s. 71, and 15 & 16 Vict., c. 38, s. 64.

"Mortgage." "mortgage" shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt:

"Mortgagor." "mortgagor" shall be taken to include every person by whom any such conveyance, pledge or charge as aforesaid shall be made:

"Mortgagee." "mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge or charge as aforesaid is made or transferred: and

"High Court." "High Court" means any Court established or to be established under <sup>1</sup>Statute 24 & 25 Vict., c. 104, <sup>2</sup>[and includes the Chief <sup>3</sup>(Courts of Oudh and Sind)] 24 & 25  
Vict., c. 104.

*Powers of Trustees for Sale, etc. and Trustees of renewable Leaseholds.*

Trustees empowered to sell, may sell in lots, and either by public auction or private contract.

2.<sup>7</sup> In all cases where, by any, will, deed or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to, the uses or trusts of such will, deed or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times.

Sale may be made under special conditions, and trustees may buy in, etc.

3.<sup>8</sup>, <sup>9</sup> It shall be lawful for the persons making any such sale to insert any such special or other stipulations either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit; and also to buy in the property or any part thereof at any sale by auction and to rescind or vary any contract for sale, and to re-sell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby;

<sup>1</sup> See the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), Coll. Stats., Ind., Vol. I, which has now been repealed by the Government of India Act.

<sup>2</sup> The words "and includes the Chief Court of Oudh" were inserted by s. 2 & Sch. of the Oudh Courts (Supplementary) Act, 1925 (32 of 1925).

<sup>3</sup> These words are to be substituted for the words "Court of Oudh" by s. 2 & Sch. of the Sind Courts (Supplementary) Act, 1926 (34 of 1926) when that Act comes into force.

<sup>4</sup> The words "and includes the Chief Court of Lower Burma" were repealed by s. 3 & Sch. II of the Repealing and Amending Act, 1923 (11 of 1923).

<sup>5</sup> The words "the Chief Court of the Punjab and" were repealed by s. 3 & Sch. II of the Repealing and Amending Act, 1919 (18 of 1919).

<sup>6</sup> Words referring to the Straits Settlements, which were repealed by the Repealing Act, 1874 (16 of 1874), have been omitted.

<sup>7</sup> Cf. 23 & 24 Vict., c. 145, s. 1. S. 2 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. See s. 2 of that Act.

<sup>8</sup> Cf. 23 & 24 Vict., c. 145, s. 2.

<sup>9</sup> S. 3 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. See s. 2 of that Act.



and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other property or otherwise.

4.<sup>1, 2</sup> For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question, in such manner as may be necessary. Trustees exercising power of sale, etc., empowered to convey.

5.<sup>1, 3</sup> The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed or instrument containing the power of sale; Money arising from sales to be laid out in manner indicated in will, etc.

and until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid: Until so laid out, money to be invested in Government securities.

Provided that if the will, deed or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.

#### *Powers of Mortgagees.<sup>4</sup>*

6.<sup>5</sup> Where any principal-money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators and assigns, shall, at any time after the expiration of one year from the time when such principal-money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the Powers incident to mortgages.

<sup>1</sup> Ss. 4 and 5 are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. See s. 2 of that Act.

<sup>2</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 3. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41, and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>3</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 4.

<sup>4</sup> As to the application of ss. 6 to 19 to certain English mortgages, see the Transfer of Property Act, 1882 (4 of 1882), s. 69, as amended by Act 3 of 1885, s. 5.

<sup>5</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 11.

## (Powers of Mortgagees.)

deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

*1st*, a power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner:

*2nd*, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

Receipts for purchase-money sufficient discharges.

7.<sup>1</sup> Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.

Notice to be given before sale;

8.<sup>2</sup> No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of such property;

but purchaser relieved from inquiry as to circumstances of sale.

but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damaged by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.

Application of purchase-money

9.<sup>3</sup> The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and

thirdly, in discharge of all the principal moneys then due in respect of such charge;

<sup>1</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 12. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>2</sup> Cf. *ibid*, s. 13.

<sup>3</sup> Cf. *ibid*, s. 14.

*(Powers of Mortgagees.)*

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns, as the case may be.

10.<sup>1</sup> The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein which the person who created the charge had power to dispose of: Conveyance to purchaser

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee-simple of the property comprised therein in cases where the mortgagor could have disposed of such fee-simple at the date of the mortgage.

11.<sup>2</sup> At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of; Owner of charge may call for title-deeds and conveyance of legal estate.

and, where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

12.<sup>3</sup> Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may, from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit. Appointment of receiver.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

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<sup>1</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 15. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>2</sup> Cf. *ibid.*, s. 16.

<sup>3</sup> Cf. *ibid.*, s. 17.

*(Powers of Mortgagees.)*

Receiver deemed to be the agent of the mortgagor.

**13.<sup>1</sup>** Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.

Powers of receiver.

**14.<sup>2</sup>** Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues and profits of the property of which he is appointed receiver, by suit, distress or otherwise in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

Receiver may be removed, and new receivers appointed.

**15.<sup>3</sup>** Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver. and new receivers may be appointed from time to time.

Receiver to receive commission not exceeding five per cent.

**16.<sup>4</sup>** Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount.

Receiver to insure if required.

**17.<sup>5</sup>** Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge which is in its nature insurable.

Application of moneys received by him.

**18.<sup>6</sup>** Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue and of all taxes, rates and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any; and in the next place in payment of all interest accruing due in respect of any principal-money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns.

<sup>1</sup> *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 18. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>2</sup> *Cf. ibid.*, s. 19.

<sup>3</sup> *Cf. ibid.*, s. 20.

<sup>4</sup> *Cf. ibid.*, s. 21.

<sup>5</sup> *Cf. ibid.*, s. 22.

<sup>6</sup> *Cf. ibid.*, s. 23.

*(Powers of Mortgagees. Leases.)*

19.<sup>1</sup> The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

This part to relate to charges by way of mortgage only.

*Leases.*

20.<sup>2</sup> Where any license to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall at any time after this Act comes into operation be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

Restriction on effect of license to alien.

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.

21.<sup>3</sup> Where in any lease heretofore granted, or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting, or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such

Restricted operation of partial licenses.

<sup>1</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 24. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>2</sup> Cf. the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 1.

<sup>3</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 2.

right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of re-entry in certain cases.

22.<sup>1</sup> Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

#### *Rent-charges.*

Release of part of land charged, not to be an extinguishment.

23.<sup>2</sup> The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice nevertheless to the rights of all persons interested in the property remaining unreleased, and not concurring in or confirming the release.

#### *Powers.*

Mode of execution of powers.

24.<sup>3</sup> A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity:

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument:

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

<sup>1</sup> Cf. the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 3.

<sup>2</sup> Cf. *ibid*, s. 10.

<sup>3</sup> Cf. *ibid*, s. 12.

*(Powers.)*

25.<sup>1</sup> Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immovable property or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other;

Legatee in trust may raise money by sale, notwithstanding want of express power in will.

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

26.<sup>2</sup> The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

Powers given by last section extended to survivors, legatees, etc.

27.<sup>3</sup> If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested.

Executors to have power of raising money, etc., where there is no sufficient bequest.

28.<sup>4</sup> Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26 and 27 of this Act, or any of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Purchasers, etc., not bound to enquire as to powers.

<sup>1</sup> Cf. the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 14.

<sup>2</sup> Cf. *ibid.*, s. 15.

<sup>3</sup> Cf. *ibid.*, s. 16.

<sup>4</sup> Cf. *ibid.*, s. 17.

(Inheritance. Assignment of Moveables and Terms for Years. Purchasers. Investment of Trust-funds.)

### Inheritance.

Descent how traced.

29.<sup>1</sup> In cases of intestacies occurring before the first day of January, 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.

<sup>2</sup> This section shall be read as part of "Act No. XXX of 1839 (for the amendment of the Law of Inheritance).

### Assignment of Moveables and Terms for Years.

Assignment to self and others.

30.<sup>4</sup> Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit* directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

### Purchasers.

Not to be bound to see to the application of purchase-money, etc.

31.<sup>5</sup> The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof.

### Investment of Trust-funds.

On what securities trust-funds may be invested

32.<sup>6</sup> Trustees having trust-money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature:

<sup>1</sup> Cf. the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 19.

<sup>2</sup> Cf. *ibid.*, s. 20.

<sup>3</sup> The Inheritance Act, 1839 (30 of 1839). It is repealed, except as to descents before 1866, by the Repealing Act, 1868 (3 of 1868).

<sup>4</sup> Cf. the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 21.

<sup>5</sup> Cf. *ibid.*, s. 23. (The limiting clause "unless the contrary shall be expressly declared by the instrument creating the trust or security" has not been reproduced.)

<sup>6</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 25. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38), s. 32, is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, *see* s. 2 of that Act.



*(Investment of Trust-funds. Trustees and Executors.)*

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

*Trustees and Executors.*

33.<sup>1, 2</sup> In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not;

Trustees may apply income of property of minors, etc., for their maintenance.

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen :

Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

34.<sup>1, 2</sup> Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators or administrator,

Provisions for appointment of new trustees on death, etc.

<sup>1</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), ss. 26 and 27. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>2</sup> Ss. 33 and 34 are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. See s. 2 of that Act.

*(Trustees and Executors.)*

of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

Transfer of  
trust-property  
to new  
trustees.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers etc.,  
of new  
trustees.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will or other instrument (if any) creating the trust.

Appointment  
of Official  
Trustee to be  
a trustee.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

Appointment  
in place of  
trustee prede-  
ceasing testa-  
tor.

**35.<sup>1, 2</sup>** The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.

Trustees'  
receipts to be  
discharges.

**36.<sup>1, 2</sup>** The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

<sup>1</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), ss. 28 and 29. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>2</sup> Ss. 35 and 36 are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, see s. 2 of that Act.

*(Trustees and Executors.)*

37.<sup>1</sup> Every deed, will or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say,—

“that the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; “and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument, to re-imburse themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument.”

Every trust-instrument deemed to contain clauses for indemnity and re-imbursement of trustees.

38.<sup>2</sup> It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give and execute such agreements, instruments of composition, releases and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.

Executors may compound, etc.

39. [*Trustee, etc., making payment under power-of-attorney, not liable by reason of death of party giving power.*] *Rep. by the Powers-of-attorney Act, 1882 (VII of 1882), s. 6.*

40.<sup>3</sup> Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and

As to liability of executor or administrator in respect of rents, covenants or agreements.

<sup>1</sup> S. 37 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, *see* s. 2 of that Act.

<sup>2</sup> *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), ss. 30 and 31. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

<sup>3</sup> *Cf.* the Law of Property Act, 1859 (22 & 23 Vict., c. 35), s. 27.

ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the persons or persons to or amongst whom the said assets may have been distributed.

As to liability of executor, etc., in respect of rents, etc., in conveyance on rent-charge.

41.<sup>1</sup> In like manner, where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the

<sup>1</sup> Cf. the Law of Property Act, 1859 (22 & 23 Vict., c. 35), s. 28.

*(Trustees and Executors.)*

hands of the person or persons to or among whom the said assets may have been distributed.

42.<sup>1</sup> Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration-suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be.

As to distribution of assets of testator or intestate after notice given by executor and administrator

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

43.<sup>1</sup> Any <sup>2</sup> [trustee,] executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice or direction of such Judge on any question respecting the <sup>2</sup> [management or] administration of the <sup>2</sup> [trust-property or] the assets of any testator or intestate.

Trustee, executor, etc., may apply by petition to Judge of High Court for opinion, advice, etc., in management, etc., of trust-property.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

The <sup>2</sup> [trustee,] executor or administrator acting upon the opinion, advice or direction given by the said Judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such <sup>2</sup> [trustee], executor or administrator in the subject-matter of the said application:

Provided nevertheless, that this Act shall not extend to indemnify any <sup>2</sup> [trustee], executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such <sup>2</sup> [trustee,] executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction: and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

<sup>1</sup> Cf. the Law of Property Act, 1859 (22 & 23 Vict., c. 35), ss. 29 and 30.

<sup>2</sup> These words are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, see s. 2 of that Act.

*General Provisions.*

Tenants for life, etc., may execute powers, notwithstanding incumbrances.

44.<sup>1</sup> For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immoveable or moveable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent: but the estates or interests of the parties to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

Operation of Act

45.<sup>2</sup> The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation or under a will or codicil confirmed or revived by a codicil executed after that date, and only to property in British India and to cases to which English law is applicable.

Short title.

46. This Act may be called the Trustees' and Mortgagees' Powers Act, 1866.

47. [*Application of Act to Straits Settlements.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

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<sup>1</sup> Cf. the Law of Property Act, 1859 (22 & 23 Vict., c. 35), s. 31.

<sup>2</sup> Cf. the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 34. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

ACT No. XVI OF 1867 <sup>1</sup>.

[1st March, 1867.]

## An Act to authorize the making of acting appointments to certain Judicial Offices.

WHEREAS the Governor General of India in Council or the Local Government, as the case may be, is empowered by divers enactments to appoint the Judges of certain Courts in British India: And whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; It is hereby enacted as follows:—

1. In every case in which the Governor General of India in Council, or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor General of India in Council or the Local Government, as the case may be, shall direct. Every person so appointed to act temporarily as a Judge of any such Court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

<sup>1</sup> Short title, "The Acting Judges Act, 1867." See the Indian Short Titles Act, 1897 (14 of 1897).

The Bill which was passed on the 1st March, 1867, and published as Act No. 16 of 1867, was introduced and passed at one sitting. See the Proceedings in Council published in Gazette of India, 1867, Supplement, p. 180.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Márbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbhum—see Gazette of India, 1881, Pt. I, p. 504.

Power to  
appoint  
acting  
Judges.

Certain  
enactments  
to be  
construed  
as if they  
contained  
a clause like  
section 1 of  
this Act.

ACT No. XXII OF 1867.<sup>1</sup>

[15th March, 1867.]

## An Act for the regulation of public Saráis and Puraos.

Preamble.

WHEREAS it is expedient to provide for the regulation of public Saráis and Puraos: It is hereby enacted as follows:—

1. [Repeal of Bengal Regulation XIV of 1807, section 11, clause 5.]  
Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

Interpreta-  
tion-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

“Sarái.”

“sarái” means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarái, the part so used of such building. It also includes a purao so far as the provisions of this Act are applicable thereto:

“Keeper of  
a sarái.”

“keeper of a sarái” includes the owner and any person having or acting in the care or management thereof:

“Magistrate  
of the  
District.”

“Magistrate of the District” means the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation:

“Local Gov-  
ernment.”

And, in any place in which this Act shall operate, “Local Government” shall mean the person administering executive government in such place, and shall include a Chief Commissioner and the Commissioner in Sind.

Notice of  
this act to  
be given to  
keepers of  
saráis.

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any sarái to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarái notice in writing of this Act, by leaving such notice for the keeper at the sarái; and shall by such notice require the keeper to register the sarái as by this Act provided.

Such notice may be in the form in the Schedule to this Act annexed or to the like effect.

<sup>1</sup> For Statement of Objects and Reasons to the Bill which was passed into law as Act 22 of 1867, see Gazette of India, 1867, p. 194 and for Proceedings in Council relating to the Bill, see *ibid*, Supplement, pp. 62, 72, 158, 225 and 232.

As to extent, see note to s. 17, *infra*.

The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Mámbhum, and Pargana Dhalbhum and the Kolhán in the District of Singbhum. See Gazette of India, 1881, Pt. I, p. 504.

The Tarául of the Province of Agra. See Gazette of India, 1876, Pt. I, p. 505.

<sup>2</sup> This reference should now be read as “District Magistrate”, see para. 2 of s. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

<sup>3</sup> The words “words in the singular include the plural, and *vice versá*” were repealed by the Repealing and Amending Act, 1914 (10 of 1914).



4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate or such other person as he shall appoint in this behalf, the names and residences of the keepers of all saráis within his jurisdiction, and the situation of every such sarái.

Registers of saráis to be kept.

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to register as by this Act provided, the keeper of any sarái or any other person shall not receive any lodger or allow any person, cattle, sheep, elephant, camel or other animal, or any vehicle, to halt or be placed in such sarái until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided.

Lodgers, etc., not to be received in saráis until registered.

6. The Magistrate of the District may, if he shall think fit, refuse to register as the keeper of a sarái a person who does not produce a certificate of character in such form and signed by such person as the Local Government shall from time to time direct.

Magistrate may refuse to register keeper not producing certificate of character. Duties of keepers of saráis.

7. The keeper of a sarái shall be bound—

- (1) When any person in such sarái is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station:
- (2) at all times when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarái and allow him to inspect the same or any part thereof:
- (3) to thoroughly cleanse the rooms and verandahs, and drains of the sarái, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf:
- (4) to remove all noxious vegetation on or near the sarái, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarái:
- (5) to keep the gates, walls, fences, roofs and drains of the sarái in repair:
- (6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at or placed in the sarái; and
- (7) to exhibit a list of charges for the use of the sarái at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

Power to  
order reports  
from keepers  
of saráis.

8. The keeper of a sarái shall from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing as may be directed by the Magistrate to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such sarái during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him.

Power to  
shut up, se-  
cure, clear  
and clean  
deserted  
saráis.

9. If any sarái by reason of abandonment or of disputed ownership shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarái, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean or clear the same;

and if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarái, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarái, by the sale of any material found therein.

Taking down  
or repairing  
ruinous  
saráis.

10. If a sarái or any part thereof be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the sarái, he shall give notice in writing to the keeper of the sarái requiring him forthwith to take down, repair or secure (as the case may be) the sarái or such part thereof as the case may require.

If the keeper do not begin to take down, repair or secure the sarái, or such part as aforesaid within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarái as he shall think necessary to be taken down, repaired or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarái, and shall be recoverable from him as hereinafter mentioned.

11. If any such sarái or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the over-plus (if any) arising from such sale to the owner of such sarái on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

Sale of materials of ruinous saráis.

12. Whoever, being the keeper of any sarái, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such a state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act:

Penalty for permitting saráis to be filthy or over grown.

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said sarái, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

Proviso.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter and add to the same.

Power for Local Government to make regulations.

All regulations made under this Act and all repeals thereof, and alterations and additions thereto, shall be published in the local official Gazette.

14. If the keeper of a sarái offend against any of the provisions of this Act or any of the regulations made in pursuance of this Act, he shall for every such offence be liable on conviction before any Magistrate to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues:

Penalty for infringing Act or regulations.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject, irrespective of this Act.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under <sup>1</sup> section 61 of the Code of Criminal Procedure.

XXV of  
1861.

<sup>1</sup> See now sections 386, 387 and 389 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

Conviction for third offence to disqualify persons from keeping saráis.

15. Where a keeper of a sarái is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarái without the license in writing of the Magistrate of the District, who may either withhold such license or grant the same on such terms and conditions as he may think fit.

Nothing in Act to apply to certain saráis.

16. No part of this Act, except section 8, shall apply to any sarái which may be under the direct management of the Local Government or of any Municipal Committee.

Extent of Act.

17. This Act shall in the first instance extend only to the <sup>1</sup> territories under the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William in Bengal.

Power to Governor General in Council to extend this Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to <sup>2</sup> extend this Act, *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her Successors by the <sup>3</sup> Statute 21 & 22 Vict., cap. 106 (*an Act for the better government of India*), except the towns of Calcutta, Madras and Bombay <sup>4</sup> \* \* \* \*.

Short title.

18. This Act may be called the Saráis Act, 1867.

## SCHEDULE.

### FORM OF NOTICE.

Take notice that on the \_\_\_\_\_ day of \_\_\_\_\_ 1867, an Act called the Saráis Act, 1867, was passed, and that, before the day of \_\_\_\_\_ 18\_\_\_\_, you, being keeper of a sarái [*or purao*] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarái [*or purao*] registered, and that the registers to be kept at [*here state where the register is to be kept*] and that, if you do not have your sarái [*or purao*] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues, and that on your applying to [*here give the name*

<sup>1</sup> Read now the Province of Agra. The Lieutenant-Governor of these territories is now Governor of the United Provinces of Agra and Oudh.

<sup>2</sup> It has been extended to Oudh. See Notification No. 591, dated 25th July, 1883, in North-West Provinces and Oudh Gazette, 1883, Pt. I, p. 433.

It has also been extended to the Punjab, see Notification No. 4499, dated 13th December, 1879, in Punjab Government Gazette, 1879, Pt. I, p. 727, but its application to that part of the Hazara District, known as Upper Tanawal, which then formed part of the Punjab, is barred by the Hazara (Upper Tanawal) Regulation No. 1900 (2 of 1900), Panj. & N. W. Code.

<sup>3</sup> Short title, "the Government of India Act, 1858" Coll. Stats., Ind. Vol. I, which has now been repealed by the Government of India Act.

<sup>4</sup> The words "and the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing and Amending Act, 1891 (12 of 1891)

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*and address of the person to keep the register*] he will register your sarái [or purao] free of all charge to you.

*Dated the            day of            18   .*

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## THE PRESS AND REGISTRATION OF BOOKS ACT, 1867.

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ACT No. XXV OF 1867.<sup>1</sup>

[22nd March, 1867.]

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.

## Preamble.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of

<sup>1</sup> Short title, "The Press and Registration of Books Act, 1867," see the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1867, p. 191; and for Proceedings in Council, see *ibid*, Supplement, pp. 72, 156 and 299.

This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been applied to the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and

## (Part I.—Preliminary.)

<sup>1</sup> \*copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:—

## PART I.

## PRELIMINARY.

1. In this Act, unless there shall be something repugnant in the subject or context,—

Interpretation-clause.

“book” includes every volume, part or division of a volume, and “Book.”

Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I; and to Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code, Vol. I.

It has been applied, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts, namely:—

the Province of Sindh, *see* Gazette of India, 1880, Pt. I, p. 672;  
Aden, *see* Gazette of India, 1879, Pt. I, p. 434;

the Territory of Point, *see* Gazette of India, 1887, Pt. I, p. 144; (Point is now no longer a Scheduled District, and all the enactments in force in the Nasik District of the Bombay Presidency, among them Act 25 of 1867, are now in force in this territory, *see* the P. int. Laws Act, 1894 (Bom. Act 2 of 1894), Bom. Code);

the Island of Porim, *see* Gazette of India, 1887, Pt. I, p. 5;

that portion of the Jalpaiguri District which was formerly the Jalpaiguri Sub-division and now forms the western portion of the District of Jalpaiguri and extends as far east as the Teesta River, the hills west of the Teesta River in the District of Darjiling, the Darjiling Tarai, the Damson Sub-division of the Darjiling District, the Districts of Hazaribagh, Lohardaga [now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 41], and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, pp. 74 and 504; the Western Duars of the Jalpaiguri District, *see* *ibid*, 1910, Pt. I, p. 1160;

the Districts of Kumaon and Garhwal, *see* Gazette of India, 1876, Pt. I, p. 605;

the scheduled portion of the Mirzapur District, *see* Gazette of India, 1879, Pt. I, p. 383;

Pargana Jaunsar Bawar in the Dehra Dun District, *see* Gazette of India, 1879, Pt. I, p. 382;

the Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan, *see* Gazette of India, 1886, Pt. I, p. 48 (portions of the districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form part of the North-West Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575, but its application to that part of the Hazara District known as Upper Tanawal is barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code);

the Districts of Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Duars) and Cachar (excluding the North Cachar Hills), *see* Gazette of India, 1878, Pt. I, p. 533;

the Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Duars in the Goalpara District, *see* Gazette of India, 1897, Pt. I, p. 299;

the District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.

It has been declared, by notification under s. 3 (b) of the same Act, 1874 (14 of 1874), not to be in force in the Scheduled District of Lahaul in the Punjab, *see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the Tarai District of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 506; to the District of Coorg, *see* *ibid*, 1918, Pt. II, p. 1730.

<sup>1</sup> The word “three” in the preamble was repealed by s. 1 of the Press and Registration of Books Act Amendment Act, 1890 (10 of 1890).

(Part I.—Preliminary. Part II.—Of Printing-presses and Newspapers.)

pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

“British India.”

“British India” means the territories which are or shall be vested in Her Majesty or Her Successors by the <sup>1</sup> Statute 21 & 22 Vict., cap. 106 (*An Act for the better government of India*) <sup>2</sup> \* \* \* \* \*;

Editor.

<sup>3</sup>[“Editor” means the person who controls the selection of the matter that is published in a newspaper,]

“Magistrate.”

“Magistrate” means any person exercising the full powers of a Magistrate <sup>4</sup>, and includes a <sup>5</sup> Magistrate of Police <sup>6</sup> \* \* \* \* \*;

“Newspaper.”

<sup>3</sup>[“Newspaper” means any printed periodical work containing public news or comments on public news,]

[Number. Gender.] Rep. by Act X of 1914.

“Local Government.”

And in every part of British India to which this Act shall extend, “Local Government” shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

2. [Repeal of Act XI of 1835.] Rep. by Act XIV of 1870.

## PART II.

### OF PRINTING-PRESSES AND NEWSPAPERS.

Particulars to be printed on books and papers.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) <sup>7</sup>[the name] of the publisher and the place of publication.

Keeper of printing press to make declaration.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:

“I, A. B., declare that I have a press for printing at ———.”

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

<sup>1</sup> Short title, “The Government of India Act, 1858,” see Coll. Stats., Ind. Vol. I, which has now been repealed by the Government of India Act.

(*Cf.* definition in s. 3 (24) of the General Clauses Act, 1897 (10 of 1897).)

<sup>2</sup> The words “other than the Settlement of Prince of Wales’ Island, Singapore and Malacca” were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

<sup>3</sup> These definitions were inserted by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>4</sup> Now Magistrate of the first class, see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 3.

<sup>5</sup> Now Presidency Magistrate, see the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 3, and the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>6</sup> The words “and a Justice of the Peace” were repealed by s. 2 of the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890).

<sup>7</sup> These words were inserted by the Amending Act, 1891 (12 of 1891).



5. No <sup>1</sup> [newspaper], shall be published in British India, except in conformity with the rules hereinafter laid down:

<sup>2</sup>(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper;]

Rules as to publication of printed periodicals containing public news.

<sup>3</sup>(2) The printer and the publisher of every such <sup>5</sup>[newspaper] shall appear <sup>4</sup>[in person or by agent authorised in this behalf in accordance with rules made under section 20, before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published, or such printer or publisher resides], and shall make and subscribe, in duplicate, the following declaration:

“ I, A. B., declare that I am the printer [or publisher, or printer and publisher] of the <sup>5</sup>[newspaper] entitled——— and printed [or published, or printed and published, as the case may be] at——.”

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

<sup>3</sup>(3) As often as the place of printing or publication is changed, a new declaration shall be necessary:

<sup>3</sup>(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

IX of 1875.

<sup>6</sup>[Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875, or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.]

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authentication of declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or <sup>7</sup>[other principal Civil

Deposit.

<sup>1</sup> This word was substituted for the words “ printed periodical work, containing public news or comments on public news ” by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>2</sup> This Clause was inserted by *ibid.*

<sup>3</sup> These Clauses were re-numbered by *ibid.*

<sup>4</sup> These words were substituted for the words “ before the Magistrate within whose local jurisdiction such work shall be published ” by *ibid.*

<sup>5</sup> This word was substituted for the words “ periodical work ” by *ibid.*

<sup>6</sup> This proviso was inserted by *ibid.*

<sup>7</sup> These words were substituted for the words “ other Court within the local limits of whose ordinary original civil jurisdiction ” by s. 3 of the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890).

## (Part II.—Of Printing-presses and Newspapers.)

Court of original jurisdiction for the place where] the said declaration shall have been made.

Inspection  
and supply  
of copies.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Office copy  
of declara-  
tion to be  
*prima facie*  
evidence.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, <sup>1</sup>[or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor]; shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, <sup>1</sup>[or printed on such newspaper, as the case may be]; that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every <sup>2</sup>[newspaper] whereof the title shall correspond with the title of the <sup>2</sup>[newspaper] mentioned in the declaration <sup>3</sup>[or the editor of every portion of that issue of the newspaper of which a copy is produced].

New declara-  
tion by per-  
sons who  
have signed  
declaration  
and subse-  
quently  
ceased to be  
printers or  
publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the <sup>2</sup>[newspaper] mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:—

“ I, A.B., declare that I have ceased to be the printer [or publisher, or printer and publisher] of the <sup>2</sup>[newspaper] entitled.—”

Authentica-  
tion and  
filing.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection  
and supply  
of copies.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy  
in evidence.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in

<sup>1</sup> These words were inserted by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>2</sup> This word was substituted for the words “periodical work” by s. 3 and First Schedule of *ibid.*

<sup>3</sup> These words were inserted by *ibid.*

*(Part II.—Of Printing-presses and Newspapers. Part III.—Delivery of Books.)*

evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the '[newspaper] therein mentioned.

<sup>2</sup>[3A. If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period.]

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### <sup>3</sup>PART III.

#### DELIVERY OF BOOKS.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say:—

Copies of books printed after commencement of Act to be delivered gratis to Government.

- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,
- (b) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies

<sup>1</sup> This word was substituted for the words "periodical work" by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>2</sup> This section was inserted by *ibid.*

<sup>3</sup> This Part was substituted for the original Part III (relating to the delivery to the Local Government of all published books, etc., and to the payment therefor and disposal of the copies) by s. 4 of the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890).

not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to---

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any <sup>1</sup>[newspaper] published in conformity with the rules laid down in section 5 of this Act.

Receipt for  
copies deli-  
vered under  
section 9.

**10.** The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of  
copies deli-  
vered under  
section 9.

**11.** The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine. Any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

Copies of  
newspaper  
printed in  
British India  
to be deliver-  
ed *gratis* to  
Government.

<sup>2</sup>[**11A.** The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.]

<sup>1</sup> This word was substituted for the words "periodical work" by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>2</sup> This section was inserted by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

## (Part IV.—Penalties.)

## PART IV.

## PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding <sup>1</sup>[two thousand] rupees, or by simple imprisonment for a term not exceeding <sup>2</sup>[six months], or by both.

Penalty for printing contrary to rule in section 3.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding <sup>1</sup>[two thousand] rupees, or by simple imprisonment for a term not exceeding <sup>2</sup>[six months], or by both.

Penalty for keeping press without making declaration required by section 4.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding <sup>1</sup>[two thousand] rupees, and imprisonment for a term not exceeding <sup>2</sup>[six months].

Punishment for making false statement.

15. Whoever shall <sup>3</sup>[edit] print or publish any <sup>4</sup>[newspaper] without conforming to the rules hereinbefore laid down, or whoever shall <sup>5</sup>[edit] print or publish, or shall cause to be <sup>3</sup>[edited] printed or published, any <sup>5</sup>[newspaper], knowing that the said rules have not been observed with respect to <sup>6</sup>[that newspaper], shall, on conviction before a Magistrate, be punished with fine not exceeding <sup>1</sup>[two thousand] rupees, or imprisonment for a term not exceeding <sup>2</sup>[six months], or both.

Penalty for printing or publishing periodicals without conforming to rules.

<sup>7</sup>[16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

Penalty for not delivering books or not supplying printer with maps.

<sup>1</sup> These words were substituted for the words "five thousand" by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>2</sup> These words were substituted for the words "two years" by *ibid.*

<sup>3</sup> This word was inserted by *ibid.*

<sup>4</sup> This word was substituted for the words "such periodical work as is hereinbefore described" by *ibid.*

<sup>5</sup> This word was substituted for the words "such periodical work" by *ibid.*

<sup>6</sup> These words were substituted for the words "that work" by *ibid.*

<sup>7</sup> This section was substituted by s. 5 of the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890).

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.]

Penalty for failure to supply copies of newspapers gratis to Government.

<sup>1</sup>[16A. If any printer of any newspaper published in British India neglects to deliver copies of the same in compliance with section 11A, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.]

Recovery of forfeitures and disposal thereof and of fines.

<sup>2</sup>[17. Any sum forfeited to the Government under <sup>3</sup>[section 16] may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the <sup>4</sup> Code of Criminal Procedure for the time being in force, and within the period XLV of 186 prescribed by the Indian Penal Code, for the levy of a fine.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.]

## PART V.

### REGISTRATION OF BOOKS.

Registration of memoranda of books.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered <sup>5</sup>[pursuant

<sup>1</sup> This section was inserted by s. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

<sup>2</sup> This section was substituted by s. 5 of the Press and Registration of Books Act (1867), Amendment Act, 1890 (10 of 1890).

<sup>3</sup> The word and figures "[Section 16]" were substituted for the words "the last foregoing section" by s. 2 and First Schedule of the Repealing and Amending Act, 1923, (11 of 1923).

<sup>4</sup> See the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>5</sup> These words were substituted for the words and figure "pursuant to section 9" by s. 6 of the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890).

*(Part V.—Registration of Books.)*

to clause (a) of the first paragraph of section 9] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

- (1) the title of the book and the contents of the title-page, with  
a translation into English of such title and contents, when  
the same are not in the English language:
- (2) the language in which the book is written:
- (3) the name of the author, translator or editor of the book or  
any part thereof:
- (4) the subject:
- (5) the place of printing and the place of publication:
- (6) the name or firm of the printer and the name or firm of the  
publisher:
- (7) the date of issue from the press or of the publication:
- (8) the number of sheets, leaves or pages:
- (9) the size:
- (10) the first, second or other number of the edition:
- (11) the number of copies of which the edition consists:
- (12) whether the book is printed or lithographed:
- (13) the price at which the book is sold to the public: and
- (14) the name and residence of the proprietor of the copyright or  
of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the '[copy thereof pursuant to clause (a) of the first paragraph of section 9].

19. The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the <sup>2</sup>[Government of India] respectively. Publication  
of memoranda  
registered.

[*Effect of registration.*] *Rep. by Act III of 1914.*

<sup>1</sup> These words were substituted for the words "copies thereof in manner aforesaid" by s. 6 of the Press and Registration of Books Act (1867), Amendment Act, 1890 (10 of 1890).

<sup>2</sup> These words were substituted for the words "Secretary to the Government of India in the Home Department" by s. 2 & Sch. I of the Repealing and Amending Act, 1914 (10 of 1914).

## PART VI.

## MISCELLANEOUS.

Power to  
make rules.

20. The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Power to  
exclude any  
class of books  
from opera-  
tion of Act.

21. <sup>1</sup>[The Governor General in Council or] the <sup>2</sup>[Local Government] may, by notification in the <sup>3</sup>[the Gazette of India or] the <sup>4</sup>[local Gazette], <sup>5</sup>[as the case may be] exclude any class of books <sup>6</sup>[or papers] from the operation of the whole or any part or parts of this Act.

22. [Continuance of parts of Act.] Rep. by Act X of 1890, s. 7.

23. [Commencement.] Rep. by Act XIV of 1870.

## THE INDIAN DIVORCE ACT.

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<sup>1</sup> These words were inserted by s. 2 & Sch. I of the Repealing and Amending Act, 1923 (11 of 1923).

<sup>2</sup> These words were substituted for the words "Governor General of India in Council" by s. 2 & Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>3</sup> These words were inserted by s. 2 & Sch. I of the Repealing and Amending Act, 1923 (11 of 1923).

<sup>4</sup> These words were substituted for the words "Gazette of India" by s. 2 & Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>5</sup> These words were inserted by s. 2 & Sch. I of the Repealing and Amending Act, 1923 (11 of 1923).

<sup>6</sup> These words were inserted by s. 2 & Sch. I of the Repealing and Amending Act, 1915 (11 of 1915).



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## (I.—Preliminary.)

ACT No. IV OF 1869.<sup>1</sup>

[26th February 1869.]

## An Act to amend the law relating to Divorce and Matrimonial Causes in India.

## Preamble.

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial: It is hereby enacted as follows:—

## I.—Preliminary.

Short title.  
Commence-  
ment of Act.

1. This Act may be called the Indian Divorce Act, and shall come into operation on the first day of April, 1869.

Extent of  
Act.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

Extent of  
power to  
grant relief  
generally,

<sup>2</sup> [Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner  
<sup>3</sup>[or respondent] professes the Christian religion,

<sup>1</sup> For Statement of Objects and Reasons, see Calcutta Gazette, 1863, p. 173; for Report of Select Committee, see Gazette of India, 1869, p. 192; for Proceedings in Council, see Calcutta Gazette, 1862, Supplement, p. 463, *ibid*, 1863, Supplement, p. 43, and Gazette of India, 1869, Supplement, p. 291.

This Act extends to India the principal provisions of the Matrimonial Causes Act, 1857 (20 & 21 Vict., c. 85), as amended by the Matrimonial Causes Act, 1859 (22 & 23 Vict., c. 61), the Matrimonial Causes Act, 1860 (23 & 24 Vict., c. 144), and the Matrimonial Causes Act, 1866 (29 & 30 Vict., c. 32). It also embodies many rulings of Sir Cresswell Cresswell and Lord Penzance.

Provision was made by the Indian Divorces (Validity) Act (10 & 11 Geo. 5, ch. 18) with respect to the validity of certain decrees granted in India for the dissolution of the marriage of persons domiciled in the United Kingdom.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code, Vol. I; in Angul and the Khondmals, Schedule to the Angul Laws Regulation, 1913 (1 of 1913), B. & O. Code, Vol. I; in the Santhál Parganas by s. 3 of the Santhál Parganas Settlement Regulation (3 of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899); in British Baluchistan by the Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

the Districts of Hazáribágh, Lohárdaga and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbhum. see Gazette of India, 1881, Pt. I, p. 504;

(The District of Lohárdaga included at that time the present district of Palamu which was separated in 1894. The District of Lohárdaga is now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44.)

the Scheduled Districts in Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I, p. 666: Scheduled Districts in the Godavery, see *ibid*, 1912, Pt. I, p. 1097.

It has been extended, by notification under s. 5 of the same Act, to the North-Western Provinces Taráí, see Gazette of India, 1876, Pt. I, p. 505.

The Limitation Act does not apply to suits under this Act, see the Indian Limitation Act, 1908 (9 of 1908), s. 29 (2).

<sup>2</sup> Substituted by the Indian Divorce (Amendment) Act, 1926 (25 of 1926).

<sup>3</sup> These words were inserted by s. 2 of the Indian Divorce (Second Amendment) Act, 1927 (XXX of 1927).

## (1.—Preliminary.)

or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented, <sup>and to make decrees of dissolution,</sup>

or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition, <sup>or of nullity.</sup>

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.]

3. In this Act, unless there be something repugnant in the subject or context,— <sup>Interpretation-clause.</sup>

(1) "High Court" means,— <sup>"High Court."</sup>

in any Regulation province—the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four;<sup>1</sup>

in the territories for the time being subject to the government of the <sup>2</sup> Lieutenant-Governor of the Punjab—the <sup>3</sup> [High Court of Judicature at Lahore];

<sup>4</sup>[in Burma]—the <sup>5</sup>[High Court of Judicature at Rangoon:] <sup>6</sup>[in Oudh—the Chief Court of Oudh:] <sup>7</sup>[in Sind—the Chief Court of Sind.]

and in any other Non-Regulation province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty:

In the case of any petition under this Act, "High Court" <sup>8</sup>is that one of the aforesaid Courts within the local limits of whose

<sup>1</sup> The Indian High Courts Act, 1861, *see now* the Government of India Act.

<sup>2</sup> Now the Governor of the Punjab.

<sup>3</sup> These words were substituted for the words "Chief Court of the Punjab" by the Repealing and Amending Act, 1919 (18 of 1919).

<sup>4</sup> For the words "in British Burma—the High Court of Judicature at Fort William in Bengal," the words "in Burma—the Special Court constituted under the Lower Burma Courts Act, 1889," were substituted by s. 97 and the second Schedule to the Lower Burma Courts Act, 1889 (11 of 1889), and for the words "the Special Court constituted under the Lower Burma Courts Act, 1899," the words "the Chief Court of Lower Burma" were substituted by section 47 and Sch. I of the Lower Burma Courts Act, 1900 (VI of 1900); and for the present text *see* the next footnote.

<sup>5</sup> These words were substituted for the words "Chief Court of Lower Burma" by the Repealing and Amending Act, 1923 (11 of 1923).

<sup>6</sup> These words were added by the Oudh Courts (Supplementary) Act, 1925 (32 of 1925).

<sup>7</sup> These words will be added by s. 2 & Sch. of the Sind Courts (Supplementary) Act, 1926 (34 of 1926), when that Act comes into force.

<sup>8</sup> In the N.-W. Frontier Province, the High Court of Judicature at Lahore is the High Court as regards proceedings under this Act, *see* the N.-W. F. P. Law and Justice Regulation, 1901 (Regulation 7 of 1901), s. 6 (1) (c), as amended by Reg. 1 of 1919, P. and N.-W. F. Code.

## (I.—Preliminary.)

ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

“ District Judge.”

(2) “ District Judge ” means,—

in the Regulation provinces <sup>2</sup>[and in Oudh] a Judge of a principal Civil Court of original jurisdiction;

<sup>3</sup>[in the Non-Regulation<sup>4</sup> provinces, other than <sup>3</sup>[Oudh] Sindh and <sup>3</sup>Burma—a Commissioner of a Division.<sup>4</sup>

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in <sup>3</sup>Burma <sup>6</sup>[and Sind]—a Judge of a <sup>7</sup>District Court;]

and in any place in the dominions of the Princes and States aforesaid—such officer<sup>8</sup> as the Governor General of India in Council shall from time to time appoint in this behalf by notification in the Gazette of India, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act:

“ District Court.”

(3) “ District Court ” means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose

<sup>1</sup> Under the powers conferred by s. 6 of the Scheduled Districts Act, 1874 (14 of 1874), the powers of a “ District Judge ” were conferred on the Deputy Commissioner, Khasi and Jaintia Hills, the Garo Hills District and the Nagá Hills, *see* p. 12 of the Assam Manual of Local Rules and Orders.

<sup>2</sup> Inserted by the Oudh Courts (Supplementary) Act, 1925 (32 of 1925).

<sup>3</sup> This clause as originally enacted was as follows:—

“ in the Non-Regulation provinces, other than British Burma and Sindh—a Commissioner of a division ”;

“ in Pegu—the Recorder of Rangoon ”;

“ in Arakan—the Recorder at Rangoon until a Recorder’s Court is established at Akyab, and thenceforward the Recorder at Akyab ”;

“ in the Tenasserim Provinces—the Recorder at Moulmein ”;

“ in Sindh—the Judicial Commissioner in that Province ”,

for the subsequent amendments, *see* s. 97 and the second Schedule to the Lower Burma Courts Act, 1889 (11 of 1889), and s. 47 and the first Schedule of the Lower Burma Courts Act, 1900 (6 of 1900); as to the operation of the repeal of the former Act by the latter, *see* s. 1 (2), Act 6 of 1900.

<sup>4</sup> In the Santhal Parganas, the Commissioner has been declared to be the District Judge, and the High Court at Calcutta to be the High Court, for the purposes of the Act, *see* s. 15 (3) of the Santhal Parganas Justice Regulation, 1893 (5 of 1893), B. & O. Code, Vol. I.

<sup>5</sup> The words “ in Sindh—the Judicial Commissioner of that Province; ” were omitted by s. 2 & Sch. of the Sind Courts (Supplementary) Act, 1926 (34 of 1926).

<sup>6</sup> These words were inserted by *ibid.*

<sup>7</sup> The word “ District ” was substituted for the word “ Divisional ” by the Repealing and Amending Act, 1923 (11 of 1923).

<sup>8</sup> For notifications issued under the power conferred by this clause, *see* p. 43 of Brit. Enact. N. S. (W. 1), Ed. 1895, and Gazette of India, 1893, Pt. I, p. 510, in respect of Kathiawar and the Nizam’s Dominions respectively.

ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together :

(4) “ Court ” means the High Court or the District Court, as the “ Court ” case may be :

(5) “ minor children ” means, in the case of sons of Native fathers, “ Minor boys who have not completed the age of sixteen years, and, in the case <sup>children.”</sup> of daughters of Native fathers, girls who have not completed the age of thirteen years : in other cases it means unmarried children who have not completed the age of eighteen years :

(6) “ incestuous adultery ” means adultery committed by a husband “ Incestuous with a woman with whom, if his wife were dead, he could not lawfully adultery.” contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity :

(7) “ bigamy with adultery ” means adultery with the same woman “ Bigamy with whom the bigamy was committed : adultery.”

(8) “ marriage with another woman ” means marriage of any person, “ Marriage being married, to any other person, during the life of the former wife, with another whether the second marriage shall have taken place within the dominions woman.” of Her Majesty or elsewhere :

(9) “ desertion ” implies an abandonment against the wish of the “ Desertion,” person charging it : and

(10) “ property ” includes, in the case of a wife, any property to which “ Property.” she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix ; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

## II.—Jurisdiction.

4. The jurisdiction now exercised by the High Courts in respect of Matrimonial divorce *a mensâ et toro*, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts <sup>jurisdiction of High Courts to be exercised subject to Act.</sup> subject to the provisions in this Act contained, and not otherwise : except <sup>Exception.</sup> so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same. <sup>Enforcement of decrees or orders made heretofore by Supreme or High Court.</sup>

## (II.—Jurisdiction. III.—Dissolution of Marriage.)

**Pending suits.** 6. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

**Court to act on principles of English Divorce Court.** 7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

<sup>1</sup> [Provided that nothing in this section shall deprive the said Courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded.]

**Extraordinary jurisdiction of High Court.** 8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

**Power to transfer suits.** The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

**Reference to High Court.** 9. When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

## III.—Dissolution of Marriage.

**When husband may petition for dissolution.** 10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

<sup>1</sup> This proviso was added by s. 2 of the Indian Divorce (Amendment) Act, 1912 (10 of 1912).



## (III.—Dissolution of Marriage.)

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; When wife may petition for dissolution.

or has been guilty of incestuous adultery,  
 or of bigamy with adultery,  
 or of marriage with another woman with adultery,  
 or of rape, sodomy or bestiality,  
 or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,  
 or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded. Contents of petition.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:— Adulterer to be co-respondent.

- (1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;
- (2) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover it;
- (3) that the alleged adulterer is dead.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner. Court to be satisfied of absence of collusion.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed, Dismissal of petition.

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

(III.—*Dissolution of Marriage.*)

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Power to  
Court to  
pronounce  
decree for  
dissolving  
marriage.

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared :

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Relief in case  
of opposition  
on certain  
grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Decrees for  
dissolution to  
be *nisi*.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

(III.—*Dissolution of Marriage.*)

During that period any person shall be at liberty, in such manner Collusion. as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Confirmation  
of decree for  
dissolution by  
District  
Judge.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person, suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the

(III.—*Dissolution of marriage.* IV.—*Nullity of Marriage.*)

alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

Appointment  
of officer to  
exercise  
duties of  
King's  
Proctor.

**17A.** The Governor General in Council may appoint for each High Court of Judicature established by Letters Patent an officer who shall, within the jurisdiction of the High Court for which he is appointed, have the like right of showing cause why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's Proctor, and the Governor General in Council may make rules regulating the manner in which the right shall be exercised and all matters incidental to, or consequential on, such exercise.

IV.—*Nullity of Marriage.*

Petition for  
decree of  
nullity.

**18.** Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of  
decrees.

**19.** Such decree may be made on any of the following grounds:—

- (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (3) that either party was a lunatic or idiot at the time of the marriage;
- (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Confirmation  
of District  
Judge's de-  
cree.

**20.** Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section 17, clauses 1, 2, 3 and 4, shall, *mutatis mutandis*, apply to such decrees.

Children of  
annulled  
marriage.

**21.** Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

<sup>1</sup> This section was inserted by s. 2 of the Indian Divorce (Amendment) Act, 1927 (XV of 1927).

## (V.—Judicial Separation. Reversal of Decree of Separation.)

## V.—Judicial Separation.

**22.** No decree shall hereafter be made for a divorce *a mensâ et toro*, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

Bar to decree for divorce *a mensâ et toro*; but judicial separation obtainable by husband or wife.

**23.** Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the District Court or the High Court; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Application for separation made by petition.

**24.** In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Separated wife deemed spinster with respect to after-acquired property.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

**25.** In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

Separated wife deemed spinster for purposes of contract and suing.

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessities supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

*Reversal of Decree of Separation.*

**26.** Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree,

Decree of separation obtained during absence of husband or

(V.—*Reversal of Decree of Separation.* VI.—*Protection-orders.*)

wife may be reversed.

on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts or acts of the wife incurred, entered into or done between the times of the sentence of separation and of the reversal thereof.

VI.—*Protection-orders.*

Deserted wife may apply to Court for protection.

27. Any wife to whom section 4 of the Indian Succession Act, 1865,<sup>1</sup> X of 1865, does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Discharge or variation of orders.

29. The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing wife's property after notice of order.

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

Wife's legal position during continuance of order.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

<sup>1</sup> See now the Indian Succession Act, 1925 (39 of 1925).

(VII.—*Restitution of Conjugal Rights.* VIII.—*Damages and Costs.*  
IX.—*Alimony.*)

VII.—*Restitution of Conjugal Rights.*

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. Petition for restitution of conjugal rights.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be ground for a suit for judicial separation or for a decree of nullity of marriage. Answer to petition.

VIII.—*Damages and Costs.*

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner. Husband may claim damages from adulterer.

Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

35. Whenever in any petition presented by a husband, the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the cost of the proceedings: Power to order adulterer to pay costs

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

- (1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or
- (2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application. Power to order litigious intervenor to pay costs

IX.—*Alimony.*

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit. Alimony pendente lite.

## (IX.—Alimony. X.—Settlements.)

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Power to  
order perma-  
nent alimony.

**37.** The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to  
order month-  
ly or weekly  
payments.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

Court may  
direct pay-  
ment of  
alimony  
to wife or to  
her trustee.

**38.** In all cases in which the Court makes any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

## X.—Settlements.

Power to  
order settle-  
ment of wife's  
property for  
benefit of  
husband and  
children.

**39.** Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage



## (X.—Settlements. XI.—Custody of Children.)

or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife. Settlement of damages.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage, Inquiry into existence of ante-nuptial or post-nuptial settlements.  
and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

## XI.—Custody of Children.

41. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court. Power to make orders as to custody of children in suit for separation.

42. The Court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending. Power to make such orders after decree.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree, Power to make orders as to custody of children in suits for dissolution or nullity.

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit;

(XI.—*Custody of Children.* XII.—*Procedure.*)

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to  
make such  
orders after  
decree or con-  
firmation.

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage, and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—*Procedure.*

Code of Civil  
Procedure to  
apply.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.<sup>1</sup>

Forms of  
petitions and  
statements.

46. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Stamp on  
petition.

Petition to  
state absence  
of collusion.

Statements to  
be verified.

47. Every petition <sup>2</sup> under this Act for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation <sup>3</sup> \* \* \* \* shall <sup>3</sup> \* \* \* state that there is not any collusion or connivance between the petitioner and the other party to the marriage;

the statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Suits on be-  
half of  
lunatics.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

Suits by  
minors.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

<sup>2</sup> For court-fee, see now the Court-fees Act, 1870 (7 of 1870), Sch. II, No. 20, *infra* p. 325.

<sup>3</sup> The words "or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and," and the words "in the first, second, and third cases mentioned in this section," were repealed by the Court-fees Act, 1870 (7 of 1870), *infra* p. 282.

(XII.—*Procedure.*)

Such undertaking \* \* \*<sup>1</sup> shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs: Service of petition.

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness: Mode of taking evidence.

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion. Competence of husband and wife to give evidence as to cruelty or desertion.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors. Power to close doors.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do. Power to adjourn.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed<sup>2</sup> from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the laws, rules and orders for the time being in force: Enforcement of and appeal from orders and decrees.

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree.

<sup>1</sup> The words " shall bear a stamp of eight annas and " were repealed by the Court-fees Act, 1870 (7 of 1870). For court-fee, see now Art. 7 of Sch. II of that Act, *infra* p. 323.

<sup>2</sup> For court-fee on memorandum of appeal, see the Court-fees Act, 1870 (7 of 1870), Sch. II, No. 20, *infra* p. 325.

(XII.—*Procedure.* XIII.—*Re-marriage.*)

No appeals as to costs.

Provided also that there shall be no appeal on the subject of costs only.

Appeal to Queen in Council.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—*Re-marriage.*

Liberty to parties to marry again.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

English clergyman not compelled to solemnize marriages of persons divorced for adultery.

58. No clergyman in Holy Orders of the \* \* \* <sup>1</sup> Church of England \* \* \* <sup>2</sup> shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

English minister refusing to perform ceremony to permit use of his church.

59. When any minister of any church or chapel of the said \* \* \* <sup>1</sup> Church refuses to perform such marriage service between any persons who, but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church entitled to officiate

<sup>1</sup> The word "United" was repealed by the Repealing Act, 1873 (12 of 1873).

<sup>2</sup> The words "and Ireland" were repealed by *ibid.*

(XIII.—*Re-marriage.* XIV.—*Miscellaneous.*)

within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

XIV.—*Miscellaneous.*

60. Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

Decree for separation or protection order valid as to persons dealing with wife before reversal.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge or variation thereof.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

Indemnity of persons making payment to wife without notice of reversal of decree or protection order.

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

Bar of suit for criminal conversation.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same: <sup>1</sup>

Power to make rules.

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.<sup>2</sup>

All such rules, alterations and additions shall be published in the local official Gazette.

<sup>1</sup> For rule in force in Bombay as to confirmation of decrees for dissolution of marriage, see Bom. R. & O.

<sup>2</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

## SCHEDULE OF FORMS.

## No. 1.—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CO-RESPONDENT, BY REASON OF ADULTERY.

(See sections 10 and 34.)

In the (High) Court of

To the Hon'ble Mr. Justice [or To the Judge of ].

The day of 186 .

The petition of A. B., of

SHEWETH,

1. That your petitioner was on the day of , one thousand eight hundred and , lawfully married to C. B., then C. D., spinster, at .

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of one thousand eight hundred and , X. Y. was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C. B. in your petitioner's said house committed adultery with the said X. Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X. Y. do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) A. B.<sup>b</sup>

<sup>a</sup> If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.

<sup>b</sup> The petition must be signed by the petitioner.

*Form of Verification.*

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

---

No. 2.—RESPONDENT'S STATEMENT IN ANSWER TO No. 1.

In the Court of                      the                      day of

Between *A. B.*, petitioner,

*C. B.*, respondent, and

*X. Y.*, co-respondent.

*C. B.*, the respondent, by *D. E.*, her attorney [*or vakil*], in answer to the petition of *A. B.*, says that she denies that she has on divers or any occasions committed adultery with *X. Y.*, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition.

(Signed)      *C. B.*

---

No. 3.—CO-RESPONDENT'S STATEMENT IN ANSWER TO No. 1.

In the (High) Court of

The

day of

Between *A. B.*, petitioner,

*C. B.*, respondent, and

*X. Y.*, co-respondent.

*X. Y.*, the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C. B.* as alleged in the said petition.

Wherefore the said *X. Y.* prays that this (Hon'ble) Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed)      *X. Y.*

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No. 4.—PETITION FOR DECREE OF NULLITY OF MARRIAGE.

(See section 18.)

In the (High) Court of

To the Hon'ble Mr. Justice      [*or To the Judge of*                      ].

The                      day of                      , 186 .

The petition of *A. B.*, falsely called *A. D.*,

SHEWETH,

1. That on the                      day of                      , one thousand eight hundred

and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to *C. D.*, then a bachelor of about thirty years of age, at [*some place in India*].

2. That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C. D.*, at divers places, and particularly at aforesaid.

3. That the said *C. D.* has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said *C. D.* was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said *C. D.* with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) *A. B.*

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*Form of Verification: see No. 1.*

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**No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF  
HER HUSBAND'S ADULTERY.**

(See section 22.)

In the (High) Court of

To the Hon'ble Mr. Justice [or To the Judge of ].

The day of 186 .

The petition of *C. B.*, of , the wife of *A. B.*

SHEWETH,

1. That on the day of , one thousand eight hundred and sixty , your petitioner, then *C. D.*, was lawfully married to *A. B.* at the Church of , in the .

2. That after her said marriage, your petitioner cohabited with the said *A. B.* at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, *etc.*, *etc.*<sup>a</sup>

3. That on divers occasions in or about the months of *August*, *September* and *October*, one thousand eight hundred and sixty , the said *A. B.*, at aforesaid, committed adultery with *E. F.*, who

---

<sup>a</sup> State the respective ages of the children.



was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of *October, November and December*, one thousand eight hundred and *sixty*, the said *A. B.*, at aforesaid, committed adultery with *G. H.*, who was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A. B.* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C. B.*<sup>a</sup>

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*Form of Verification: see No. 1.*

---

No. 6.—STATEMENT IN ANSWER TO No. 5.

In the (High) Court of

*B.* against *B.*

The                      day of                      .

The respondent, *A. B.*, by *W. Y.*, his attorney [*or vakil*], saith,—

1. That he denies that he committed adultery with *E. F.*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E. F.*, if any.

3. That he denies that he committed adultery with *G. H.*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G. H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A. B.*

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No. 7.—STATEMENT IN REPLY TO No. 6.

In the (High) Court of

*B.* against *B.*

The                      day of                      .

The petitioner, *C. B.*, by her attorney [*or vakil*], says,—

1. That she denies that she condoned the said adultery of the respondent with *E. F.*, as in the second paragraph of the statement in answer alleged.

---

<sup>a</sup> The petition must be signed by the petitioner.

continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at \_\_\_\_\_, that from and after the said \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C. B.*, and also order that the said *C. B.* do pay the costs of and incident to these proceedings.

(Signed) *A. B.*

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*Form of Verification: see No. 1.*

---

No. 9.—STATEMENT IN ANSWER TO No. 8.

In the (High) Court of

The \_\_\_\_\_ day of \_\_\_\_\_.

Between *A. B.*, petitioner, and  
*C. B.*, respondent.

*C. B.*, the respondent, in answer to the petition filed in this cause, by *W. J.*, his attorney [*or vakil*], saith that he denies that he has been guilty of cruelty towards the said *A. B.*, as alleged in the said petition.

(Signed) *C. B.*

---

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION.

(See section 24.)

In the (High) Court of

To the Hon'ble Mr. Justice

[*or To the Judge of* \_\_\_\_\_].

The \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_\_\_\_.

The petition of *A. B.*, of \_\_\_\_\_.

SHEWETH,

1. That your petitioner was on the \_\_\_\_\_ day of \_\_\_\_\_, lawfully married to \_\_\_\_\_.

2. That on the \_\_\_\_\_ day of \_\_\_\_\_, this (Hon'ble) Court, at the

petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

*Here set out the decree.*

3. That such decree was obtained in the absence of your petitioner, who was then residing at

*[State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence,]*

*or*

That there was reasonable ground for your petitioner leaving his said wife for that his said wife.

*[Here state any legal grounds justifying the petitioner's separation from his wife.]*

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree.

(Signed) A. B.

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*Form of Verification: see No. 1.*

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#### NO. 11.—PETITION FOR PROTECTION-ORDER.

*(See section 27.)*

In the (High) Court of

To the Hon'ble Mr. Justice

[or To the Judge of ].

The day of , 186 .

The petition of C. B., of ,  
the wife of A. B.

SHEWETH,

That on the day of she was lawfully married to A. B.  
at .

That she lived and cohabited with the said A. B. for  
years at , and also at , and had had children,  
issue of her said marriage, of whom are now living with the  
applicant, and wholly dependent upon her earnings.

That on or about , the said A. B., without any reasonable cause,  
deserted the applicant, and hath ever since remained separate and apart  
from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [or on her own property, as the case may be] and hath thereby and otherwise acquired certain property consisting of [here state generally the nature of the property].

Wherefore she prays an order for the protection of her earnings  
and property acquired since the said                      day  
of                      , from the said A. B., and from all creditors  
and persons claiming under him.

(Signed) C. B.

No. 12.—PETITION FOR ALIMONY PENDING THE SUIT.

(See section 36.)

In the (High) Court of

*B.* against *B.*

To the Hon'ble Mr. Justice                      [or To the Judge of                      ]  
The                      day of                      , 186 .  
The petition of C. B., the law-  
ful wife of A. B.

SHEWETH,

1. That the said *A. B.* has for some years carried on the business of \_\_\_\_\_, at \_\_\_\_\_, and from such business derives the net annual income of from Rs. 4,000 to 5,000.
2. That the said *A. B.* is possessed of plate, furniture, linen and other effects at his said house \_\_\_\_\_ aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.
3. That the said *A. B.* is entitled, under the will of his father, subject to the life-interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.<sup>a</sup>

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) C. B.

\* The petitioner should state her husband's income as accurately as possible.

*Form of Verification: see No. 1.*

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No. 13.—STATEMENT IN ANSWER TO No. 12.

In the (High) Court of

*B. against B.*

*A. B.*, of \_\_\_\_\_, the above-named respondent, in answer to the petition for alimony, pending the suit of *C. B.*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of \_\_\_\_\_, at \_\_\_\_\_, and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house \_\_\_\_\_ aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition. I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of \_\_\_\_\_ last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the \_\_\_\_\_ day of \_\_\_\_\_ last, she

took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) A. B.

No. 14.—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE FOR RESPONDENT'S COSTS.

(See section 49.)

In the (High) Court of

I, the undersigned, A. B., of , being the next friend of C. D., who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against D. D. of , hereby undertake to be responsible for the costs of the said D. D. in such suit, and that, if the said C. D. fail to pay to the said D. D. when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him (or her) to pay to the said D. D., I will forthwith pay the same to the proper officer of this Court.

Dated this      day of      , 186 .

(Signed) A. B.

## THE UNCLAIMED DEPOSITS ACT, 1870.

ACT No. V OF 1870.<sup>1</sup>

[4th February 1870.]

An Act to enable the High Courts at the Presidency-towns to deal with cost of petitions for certain moneys transferred to Government.

WHEREAS the High Courts of Judicature at Fort William, Madras Preamble.

<sup>1</sup> Short title, The Unclaimed Deposits Act, 1870. See the Indian Short Titles Act, 1897 (14 of 1897).

• For the Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 5; for Proceedings in Council, see *ibid*, 1869, Supplement, p. 1506; *ibid*, 1870, Supplement, pp. 53, 57, 92 and 136.

and Bombay have no power to deal with the costs of petitions under section 4 of Act No. XXV of 1866 (*to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay* <sup>1</sup>\* \* \* \*)  
<sup>2</sup>\* \* \* for payment of certain securities, moneys or proceeds transferred to Government;

And whereas it is expedient to confer such power upon the said High Courts;

It is hereby enacted as follows:—

Power to  
direct by  
whom costs  
are to be  
paid.

1. Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid.

## THE COURT-FEES ACT, 1870.

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Levy of fees in Presidency Small Cause Courts.
4. Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction:  
in their appellate jurisdiction:  
as Courts of reference and revision.
5. Procedure in case of difference as to necessity or amount of fee.

<sup>1</sup> The words "and in the Supreme Court of the Straits Settlements and the proceeds of certain estates in the charge of the Administrator General of Bengal" were repealed by the Repealing Act, 1874 (16 of 1874).

<sup>2</sup> The words "or under s. 60 of the Administrator General's Act, 1867" are omitted as the Administrator General's Act, 1867 (24 of 1867) and this Act so far as it relates to the Administrator General were repealed by the Administrator General's Act, 1874 (2 of 1874).

## CHAPTER III.

## FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

## SECTIONS.

6. Fees on documents filed, etc., in Mufassal Courts or in public offices.
  7. Computation of fees payable in certain suits:
    - i. for money;
    - ii. for maintenance and annuities;
    - iii. for other moveable property having a market-value;
  - iv. (a) for moveable property of no market-value.
    - (b) to enforce a right to share in joint family property;
    - (c) for a declaratory decree and consequential relief;
    - (d) for an injunction;
    - (e) for easements;
    - (f) for accounts;
  - v. for possession of land, houses and gardens;  
proviso as to Bombay Presidency;  
for houses and gardens;
  - vi. to enforce a right of pre-emption;
  - vii. for interest of assignee of land-revenue;
  - viii. to set aside an attachment;
  - ix. to redeem;  
to foreclose;
  - x. for specific performance;
  - xi. between landlord and tenant.
8. Fee on memorandum of appeal against order relating to compensation.
  9. Power to ascertain nett profits or market-value.
  10. Procedure where nett profits or market-value wrongly estimated.
  11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.
  12. Decision of questions as to valuation.
  13. Refund of fee paid on memorandum of appeal.
  14. Refund of fee on application for review of judgment.
  15. Refund where Court reverses or modifies its former decision on ground of mistake.
  16. [*Repealed.*]
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PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF  
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## SECTIONS.

- 19A. Relief where too high a court-fee has been paid.
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## OF THE MODE OF LEVYING FEES.

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  32. [*Repealed.*]
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## (Chapter I.—Preliminary.)

THE COURT-FEES ACT, 1870.<sup>1</sup>

[11th March 1870.]

## CHAPTER I.

## PRELIMINARY.

Short title.  
Extent of  
Act.  
Commence-  
ment of Act.

1. This Act may be called the Court-fees Act, 1870.

It extends to the whole of British India;

And it shall come into force on the first day of April, 1870.

<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1869, Pt. V, p. 57; for proceedings in Council, *see* *ibid*, 1869, Supplement, pp. 1179 and 1452; *ibid*, 1870, Supplement, pp. 52, 378, 421, 427 and 434.

The Act has been amended in its application:—

- (1) temporarily to Bombay by the Court-fees (Bombay Amendment) Act, 1926, (Bom. Act, 3 of 1926).
- (2) to Bengal by the Bengal Court-fees (Amendment) Act, 1922, (Ben. Act IV of 1922) and Bengal Court-fees (Amendment No. II) Act, 1922, (Ben. Act VI of 1922).
- (3) temporarily to Assam by the Assam Court-fees (Amendment) Act, 1922 (Assam Act II of 1922) the Assam Court-fees (Amendment No. II) Act, 1922 (Assam Act IV of 1922), and the Assam Court-fees (Amendment) Act, 1925 (Assam Act, III of 1925).
- (4) to Madras by the Madras Court-fees (Amendment) Act, 1922, (Madras Act V of 1922).
- (5) to Bihar and Orissa by the B. & O. Court-fees (Amendment) Act, 1922, (B. & O. Act II of 1922).
- (6) to Punjab by the Court-fees (Punjab Amendment) Act, 1922, (Punjab Act 7 of 1922).

Act 7 of 1870 has been declared in force—

- in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), Sch. I, Bur. Code; Vol. I.
- in British Baluchistan, by the British Baluchistan Laws Regulation 1913 (2 of 1913), s. 3, Bal. Code;
- in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I.
- in the sub-division of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code, Vol. I.
- in the Chittagong Hill tracts, by notification under s. 4 (3) of the Chittagong Hill tracts Regulation, 1900 (1 of 1900), *see* notification No. 5702-Ex., dated the 11th April 1927, Calcutta *Gazette*, 1927, Pt. I, p. 844;
- in the Pargana of Manpur, by the Manpur Laws Regulation, 1926 (II of 1926), s. 2.

It has further been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

- the District of Hazaribagh, Gazette of India, 1881, Pt. I, p. 507;
- the District of Lohardaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44; the District of Lohardaga then included the present District of Palamau, separated in 1894), *see* Gazette of India, 1881, Pt. I, p. 508;
- the District of Manbhum, Gazette of India, 1881, Pt. I, p. 509;
- the Pargana Dhalbhum in the District of Singhbhum, Gazette of India, 1881, Pt. I, p. 510.

## (Chapter I.—Preliminary.)

12. In this Act, unless there is anything repugnant in the subject or context, “Chief Controlling Revenue-authority” means—

“Chief  
controlling  
Revenue  
authority”  
defined.

- (a) in the Presidency of Fort St. George <sup>2</sup>[the Presidency of Fort William in Bengal] and the territories respectively under the administration of the Lieutenant-Governors of <sup>3</sup>[Bihar and Orissa] and the <sup>4</sup>North-Western Provinces and the Chief Commissioner<sup>4</sup> of Oudh—the Board of Revenue;
- (b) in the Presidency of Bombay outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;
- (c) in Sindh—the Commissioner;
- (d) in the Punjab<sup>5</sup> and Burma, including Upper Burma—the Financial Commissioner; and
- (e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette,<sup>6</sup> appoint in this behalf.

the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869;

the Tarai of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 505.

It has been extended by notification under s. 5 of the same Act to the Kolhan in the District of Singhbhum, *see* Gazette of India, 1907, Pt. I, p. 655, and under ss. 5 and 5A of that Act to the following Scheduled Districts, namely:—the Garo Hills District, the Khasi and Jaintia Hills District, the Naga Hills District, the North Cachar Sub-division of the Cachar District, the Mikir Hill Tract in the Nowgong District and the Dibrugar Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house-tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption, *see* Assam Gazette, 1887, Pt. I, p. 861; Gazette of India, 1884, Pt. I, p. 164; the Lushai Hills, with the same proviso, *see* Gazette of India, 1904, Pt. I, p. 913, and Assam Gazette, 1904, Pt. II, p. 787.

The Act came into permanent operation in Aden on 1st April, 1876, *see* Bombay Government Gazette, 1876, Pt. I, p. 956.

It has been declared inapplicable to proceedings before officers making a settlement, and in certain other cases under the Santhal Parganas Settlement Regulation (3 of 1872), s. 8, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I.

<sup>1</sup> The present s. 2 was added by s. 2 of the Court-fees (Amendment) Act, 1901 (10 of 1901). The original section relating to repeal of enactments was repealed by the Repealing Act, 1870 (14 of 1870).

<sup>2</sup> These words were inserted by s. 2 and First Schedule of the Repealing and Amending Act, 1917 (24 of 1917).

<sup>3</sup> These words were substituted for the word “Bengal” by *ibid*.

<sup>4</sup> These Provinces are now known as the United Provinces of Agra and Oudh and the Lieutenant-Governor and Chief Commissioner as the Lieutenant-Governor (now Governor) of these Provinces, *see* Proclamation No. 9196 P., dated the 22nd March, 1902, Gazette of India, 1902, Pt. I, p. 228, and the United Provinces Designation Act, 1902 (7 of 1902).

<sup>5</sup> As to the N.-W. F. Province, *see* the N.-W. F. Province Law and Justice Regulation, 1901 (7 of 1901), s. 6 (1) (d), P. and N.-W. F. Code.

<sup>6</sup> For officer appointed for—

(1) the Island of Bombay, *see* Bombay Government Gazette, 1902, Pt. I, p. 35;

(2) Baluchistan, *see* Gazette of India, 1908, Pt. I, p. 389; and

(3) The Assam Valley Districts and certain parts of the district of Cachar,

*see* E. B. & A. Gazette, 1905, Pt. I, p. 5.

*(Chapter II.—Fees in the High Courts and in the Courts of Small Causes at the Presidency-towns.)*

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

Levy of fees in High Courts on their original sides.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by <sup>1</sup>[section 15 of the Indian High Courts Act, 1861 or section 107 of the Government of India Act, 1915].

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14,<sup>2</sup> \* 20 and 21 of the second schedule to this Act annexed;

Levy of fees in Presidency Small Cause Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the <sup>3</sup>Presidency-towns, and their several offices,

shall be collected in manner hereinafter appearing.

Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction;

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction :

or in the exercise of its jurisdiction as regards appeals from the <sup>4</sup>[judgments (other than judgments passed in the exercise of the ordinary original Civil Jurisdiction of the Court) of one] or more Judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision.

or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Procedure in case of difference as to necessity or amount of fee.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except

<sup>1</sup> These words and figures were substituted for the words and figures "Statute 24 & 25 of Victoria, Chapter 104, section 15" by s. 2 and first schedule of the Repealing and Amending Act, 1917 (24 of 1917).

<sup>2</sup> The number "sixteen" was repealed by the Amending Act, 1891 (12 of 1891).

<sup>3</sup> See the Presidency Small Cause Courts Act, 1882 (15 of 1882), Ch. X.

<sup>4</sup> These words were substituted for the words "judgment of two" by s. 2 of the Court-fees (Amendment) Act, 1922 (19 of 1922).

(Chapter II.—Fees in the High Courts and in the Courts of Small Causes at the Presidency-towns. Chapter III.—Fees in other Courts and in Public Offices.)

when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

### CHAPTER III.

#### FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Fees on documents filed, etc., in Mufassal Courts or in public offices;

17. The amount of fee payable under this Act in the suits next herein-after mentioned shall be computed as follows:—

Computation of fees payable in certain suits for money;

i. In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed:

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

for maintenance and annuities;

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

for moveable property having a market-value;

iv. In suits—

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

for moveable property of no market-value;

<sup>1</sup> For amendment to s. 7 in its application to Bombay, see s. 2 of the Court-fees (Bombay Amendment) Act, 1926 (3 of 1926).

*(Chapter III.—Fees in other Courts and in Public Offices.)*

to enforce a  
right to share  
in joint fami-  
ly property ;

for a declar-  
atory decree  
and conse-  
quential re-  
lief ;

for an in-  
junction ;

for ease-  
ments ;

or accounts ;

(b) to enforce the right to share in any property on the ground that it is joint family property,

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

(d) to obtain an injunction,

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal :

In all such suits the plaintiff shall state the amount at which he values the relief sought<sup>1</sup> \* \* \* :

for possession  
of lands,  
houses and  
gardens ;

v. In suits for the possession of land, houses and gardens—according to the value of the subject-matter ; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable :

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid ;

and such revenue is settled, but not permanently—

<sup>2</sup>five times the revenue so payable :

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits :

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with

<sup>1</sup> The words "and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted" were repealed by the Amending Act, 1891 (12 of 1891).

<sup>2</sup> In the Punjab the word "ten" is substituted for the word "five" by s. 49 (c) of the Punjab Courts Act, 1918 (Punjab Act 6 of 1918).

## (Chapter III.—Fees in other Courts and in Public Offices.)

reference to the value of similar land in the neighbourhood:

- (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—the market-value of the land:

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be— Proviso as to Bombay Presidency;

- (1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey-assessment;
- (2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and
- (3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted

*Explanation.*—The word “estate,” as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

- (e) Where the subject-matter is a house or garden—
- for houses and gardens;
- according to the market-value of the house or garden:
- vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed: to enforce a right of pre-emption;
  - vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint: for interest of assignee of land-revenue;
  - viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached: to set aside an attachment;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

- ix. In suits against a mortgagee for the recovery of the property to redeem; mortgaged,



*(Chapter III.—Fees in other Courts and in Public Offices.)*

to foreclose;

and in suits by a mortgagee to foreclose the mortgage,  
or, where the mortgage is made by conditional sale, to have the  
sale declared absolute—

according to the principal money expressed to be secured by the  
instrument of mortgage:

for specific  
performance;

x. In suits for specific performance—

- (a) of a contract of sale—according to the amount of the consideration:
- (b) of contract of mortgage—according to the amount agreed to be secured:
- (c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:
- (d) of an award—according to the amount or value of the property in dispute:

between  
landlord and  
tenant.

xi. In the following suits between landlord and tenant:—

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- <sup>1</sup>(cc) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of <sup>2</sup>[immoveable property] from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent—

according to the amount of the rent of the <sup>2</sup>[immoveable property]  
to which the suit refers, payable for the year next before the  
date of presenting the plaint.

Fee on memo-  
randum of  
appeal  
against order  
relating to  
compensa-  
tion.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the "acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

<sup>1</sup> This clause was inserted by s. 2 (1) of the Court-fees (Amendment) Act 1905 (6 of 1905).

<sup>2</sup> These words were substituted for the word "land" by s. 2 (2) of *ibid.*

<sup>3</sup> See now the Land Acquisition Act, 1894 (1 of 1894).

*(Chapter III.—Fees in other Courts and in Public Offices.)*

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Power to ascertain nett profits or market-value.

10. i. If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

Procedure where nett profits or market-value wrongly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

1\* \* \* \* \*

11. In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

Decision of question as to valuation.

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has

<sup>1</sup> Clause (iii) was repealed by the Amending Act, 1891 (12 of 1891).

The clause was as follows.—“Section 180 of the Code of Civil Procedure shall be construed as if the words ‘the market-value of any property or’ were inserted after the word ‘ascertaining’ and as if the words ‘or annual nett profits’ were inserted after the word ‘damages’.”

## (Chapter III.—Fees in other Courts and in Public Offices.)

been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii, shall apply.

Fee paid on memorandum of appeal.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the <sup>1</sup>Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in <sup>2</sup>section 351 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on application for review of judgment.

14. Where an <sup>3</sup>application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before <sup>4</sup>such day.

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the <sup>5</sup>[application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. [Additional fee where respondent takes objection to unappealed part of decree.] *Rep. Act V of 1908.*

<sup>1</sup> This reference should now be read as applying to Act 5 of 1908.

<sup>2</sup> This reference should now be read as applying to the corresponding provision of Act 5 of 1908.

<sup>3</sup> As to application for review of judgment, see the Code of Civil Procedure, 1908 (Act 5 of 1908).

<sup>4</sup> See Sch. I, Nos. 4 and 5, *infra*.

<sup>5</sup> The word "application" was substituted for the original words "plaint or memorandum of appeal" by s. 1 of the Court-fees Act Amendment Act, 1870 (20 of 1870), (amending this Act).

*(Chapter III.—Fees in other Courts and in Public Offices.)*

17. Where a suit embraces two or more distinct subjects, the plaintiff or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaintiffs or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act. Multifarious suits.

Nothing in the former part of this section shall be deemed to affect the power conferred by the <sup>1</sup>Code of Civil Procedure, section 9.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the <sup>2</sup>Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment. Written examinations of complainants.

19. Nothing contained in this Act shall render the following documents chargeable with any fee:— Exemption of certain documents.

- i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.
- ii. [*Rep. by the Amending Act, 1891 (XII of 1891).*]
- iii. Written statements called for by the Court after the first hearing of a suit.
- iv. [*Rep. by the Cantonments Act, 1889 (XIII of 1889).*]
- v. Plaints in suits tried by <sup>3</sup>Village Munsifs in the Presidency of Fort St. George.
- vi. Plaints and processes in suits before District Panchayats in the same Presidency.
- vii. Plaints in suits before Collectors under <sup>4</sup>Madras Regulation XII of 1816.
- viii. Probate of a will, letters of administration, <sup>5</sup>[and, save as regards debts and securities, a certificate under <sup>6</sup>Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

<sup>1</sup> See now Code of Civil Procedure (Act 5 of 1908).

<sup>2</sup> This reference should now be read as referring to the Code of Criminal Procedure (Act 5 of 1898)—see s. 3 of that Act.

<sup>3</sup> See the Madras Village Courts Act, 1889 (Mad. Act 1 of 1889), Mad. Code, Vol. II.

<sup>4</sup> Mad. Code, Vol. I.

<sup>5</sup> These words were substituted for the original words and figures "and certificate mentioned in the First Schedule to this Act annexed, No. 12," by s. 13 (2) of the Succession Certificate Act, 1889 (7 of 1889).

<sup>6</sup> Bom. Code, Vol. I.

*(Chapter III.—Fees in other Courts and in Public Offices.)*

- ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- x. Application relating to a supply for irrigation of water belonging to Government.
- xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- xii. Application for service of notice of relinquishment of land or of enhancement of rent.
- xiii. Written authority to an agent to distrain.
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
- xvi. Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police-officer, or to or before the <sup>1</sup>Heads of Villages or the <sup>2</sup>Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.
- xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.
- xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Rail- **XLV of 1880** way Company.
- xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- xx. Application for the payment of money due by Government to the applicant.

<sup>1</sup> See Madras Regulations 11 of 1816 and 4 of 1821, s. 6, Mad. Code, Vol. I.

<sup>2</sup> See Bombay Village Police Act, 1867 (Bom. Act 8 of 1867), ss. 14, 15 and 16 Bom. Code, Vol. II

(Chapter III.—Fees in other Courts and in Public Offices. Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.)

- xxi. Petition of appeal against the chaukidari assessment under <sup>1</sup>Act No. XX of 1856, or against any municipal tax.
- xxii. Applications for compensation under any law for the time being in force relating to the <sup>2</sup>acquisition of property for public purposes.
- xxiii. Petitions presented to the Special Commissioner appointed under <sup>3</sup>Bengal Act No. II of 1869 (*to ascertain, regulate and record certain tenures in Chota Nagpore*).
- xv of 1872. <sup>4</sup>xxiv. [Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.]

### CHAPTER IIIA.<sup>5</sup>

#### PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue-authority <sup>6</sup>[for the local area] in which the probate or letters has or have been granted, and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation, and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

Relief where too high a court-fee has been paid.

- (a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

<sup>1</sup> Punjab & N. W. Code, 1916, p. 16, Ajmer Code, 1905, p. 27.

<sup>2</sup> See now the Land Acquisition Act, 1894 (1 of 1894).

<sup>3</sup> B. & O. Code, Vol. II.

<sup>4</sup> This clause was substituted for the original clause by s. 2 of the Indian Christian Marriage Act, 1872 (15 of 1872). The original clause was as follows:—"petitions under the 14th and 15th of Victoria, Ch. 40 (*an Act for marriages in India*), s. 5, or under Act No. 5 of 1852, s. 9."

<sup>5</sup> Chapter IIIA was inserted by s. 6 of the Probate and Administration Act, 1875 (13 of 1875).

<sup>6</sup> These words were substituted for the words "of the Province" by s. 3 (1) of the Court-fees (Amendment) Act, 1901 (10 of 1901).

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.)

Relief where debts due from a deceased person have been paid out of his estate.

**19B.** Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

**19C.** Whenever <sup>1</sup> \* a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust-property though not covered by court-fee.

**19D.** The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, not, withstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Provision for case where too low a court-fee has been paid on probates, etc.

**19E.** Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority

<sup>1</sup> The word "such" was repealed by the Amending Act, 1891 (12 of 1891).

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.)

<sup>1</sup>[for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

**19F.** In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Administrator to give proper security before letters stamped under section 19F.

**19G.** Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months<sup>2</sup> \* \* \* \* \* after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of underpayment.

<sup>4</sup>[**19H.** (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

Notice of applications for probate or letters of administration

<sup>1</sup> These words were substituted for the words "of the Province" by s. 3 (1) of the Court-fees (Amendment) Act, 1901 (10 of 1901).

<sup>2</sup> As to recovery of penalties or forfeitures under s. 19G, see *infra*, s. 19J.

<sup>3</sup> The words and figures "after the first day of April 1875, or" were repealed by the Amending Act, 1891 (12 of 1891).

<sup>4</sup> Sections 19H, 19I, 19J & 19K were inserted by s. 2 of the Court-fees Amendment Act, 1899 (11 of 1899).



(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.)

tion to be  
given to  
Revenue-authorities,  
and procedure thereon

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-authority <sup>1</sup>[for the local area in which the High Court is situated].

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the <sup>2</sup>Indian Succession Act, 1865, or, as the case may be, by section 98 of <sup>2</sup>the Probate and Administration Act, 1881.

X of 1865.

V of 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue-authority of any application under section 19E.

<sup>1</sup> These words were substituted for the words " of the Provinces " by s. 3 (2) of the Court-fees Amendment Act, 1901 (10 of 1901).

<sup>2</sup> See now, the Indian Succession Act, 1925 (39 of 1925).

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration. Chapter IV.—Process-fees.)

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).]

<sup>1</sup>[19I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.] Payment of court-fees in respect of probates and letters of administration.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).]

<sup>1</sup>[19J. (1) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (6), and any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.] Recovery of penalties, etc.

(2) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any court-fee under section 19F in excess of the full court-fee which ought to have been paid.]

<sup>1</sup>[19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.] Sections 6 and 28 not to apply to probates or letters of administration.

## <sup>2</sup>CHAPTER IV.

### PROCESS-FEES.

20. The High Court shall, as soon as may be, make rules as to the following matters:— Rules as to cost of processes.

1. The fees chargeable for serving and executing processes issued by

<sup>1</sup> These sections were inserted by s. 2 of the Court-fees Amendment Act, 1899 (11 of 1899).

<sup>2</sup> This chapter (Sections 20 to 23) does not apply to areas in which the Burma Process Fees Act, 1910 (Bur. Act 1 of 1910) is in force, see s. 2 of that Act.

## (Chapter IV.—Process-fees.)

such Court in its appellate jurisdiction, and by the other Civil<sup>1</sup> and Revenue<sup>1</sup> Courts established within the local limits of such jurisdiction;

ii. the fees chargeable for serving and executing processes issued by the criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation  
and publica-  
tion of rules.

All such rules, alterations and additions shall, after being confirmed by the Local Government <sup>2</sup>\* \* \* be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Tables of  
process-fees.

**21.** A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of  
peons in  
District and  
subordinate  
Courts.

**22.** Subject to rules to be made by the High Court and approved by the Local Government<sup>4</sup> \* \* \*

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of  
peons in  
Mufassal  
Small Cause  
Courts.

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*)<sup>5</sup> shall be deemed to be subordinate to the Court of the District Judge.

<sup>1</sup> In the Punjab, the words "and revenue" are repealed, see the Punjab Land-revenue Act, 1887 (17 of 1887), P. and N.-W. F. Code.

<sup>2</sup> The words "and sanctioned by the Governor General of India in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>3</sup> For rules made under the powers conferred by this section see different Local Rules and Orders.

<sup>4</sup> The words "and the Governor General of India in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>5</sup> The reference to Act 11 of 1865 should now be read as to the Provincial Small Cause Courts Act, 1887 (9 of 1887), s. 2 (2) and (3).

(Chapter IV.—Process-fees. Chapter V.—Of the Mode of Levying Fees.)

<sup>1</sup>23. Subject to rules <sup>2</sup>to be framed by the Chief Controlling Revenue-authority and approved by the Local Government<sup>3</sup>\* \* \* every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Number of  
peons in  
Revenue  
Courts.

24. [Process served under this Chapter to be held to be process within meaning of Code of Civil Procedure.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

## CHAPTER V.

### OF THE MODE OF LEVYING FEES.

<sup>4</sup>25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Collection  
of fees by  
stamps.

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the <sup>5</sup>[Local Government] may, by notification in the <sup>6</sup>[Local Official Gazette] from time to time direct.<sup>7</sup>

Stamps to be  
impressed  
or adhesive.

27. The Local Government may, from time to time, make <sup>8</sup>rules for regulating—

Rules for  
supply, num-  
ber, renewal  
and keeping  
accounts of  
stamps.

(a) the supply of stamps to be used under this Act;

(b) the number of stamps to be used for denoting any fee chargeable under this Act;

(c) the renewal of damaged or spoiled stamps; and

(d) the keeping accounts of all stamps used under this Act:

<sup>1</sup> In the Punjab, s. 23 is repealed—see the Punjab Land-revenue Act, 1887 (17 of 1887), P. and N. W. F. Code. S. 23 has been amended in its application to the U. P. see U. P. Act XII of 1922.

<sup>2</sup> For rules framed under the powers conferred by this section see different Local Rules and Orders.

<sup>3</sup> The words "and the Governor General of India in Council" were omitted by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

<sup>4</sup> In Burma, see also s. 3 of the Burma Process Fees Act, 1910 (Bur. Act 1 of 1910) Bur. Code, Vol. II.

<sup>5</sup> These words were substituted for the words "Governor General of India in Council" by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

<sup>6</sup> These words were substituted for the words "Gazette of India" by *ibid*.

<sup>7</sup> For rules as to levy of court-fees by adhesive and impressed stamps, see Gazette of India, 1883, Pt. I, p. 189.

<sup>8</sup> For rules under s. 27 see different Local Rules and Orders.

(Chapter V.—Of the Mode of Levying Fees. Chapter VI.—  
Miscellaneous.)

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Stamping  
documents  
inadvertently  
received.

**28.** No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended  
document.

**29.** Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation  
of stamp.

**30.** No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

## CHAPTER VI.

### MISCELLANEOUS.

**31.** [*Repayment of fees paid on applications to Criminal Courts.*] *Rep. Act 18 of 1923, s. 163.*

**32.** [*Amendment of Act VIII of 1859 and Act IX of 1869.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Admission  
in criminal  
cases of do-  
cuments for  
which proper  
fee has not  
been paid.

**33.** Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

## (Chapter VI.—Miscellaneous.)

**34.** (1) The Local Government may from time to time make <sup>2</sup>rules for regulating the sale of stamps to be used under this Act, the persons <sup>Sale of stamps.</sup> by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**35.** The <sup>3</sup>[Local Government] may, from time to time by <sup>4</sup>notification in the <sup>5</sup>[local official Gazette] reduce or remit, in the whole or in any part of <sup>6</sup>[the territories under its administration] all or any of the fees mentioned in the first and second schedules to this Act annexed, and may in like manner cancel or vary such order. <sup>Power to reduce or remit fees.</sup>

**36.** Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary. <sup>Saving of fees to certain officers of High Courts.</sup>

<sup>1</sup> This section was substituted for the original section by the Amending Act, 1891 (12 of 1891).

<sup>2</sup> For rules issued under this section, see different Local Rules and Orders.

<sup>3</sup> These words were substituted for the words "Governor General of India in Council" by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

<sup>4</sup> See Gen. R. and O. and for notification by the Chief Commissioner of Delhi, see Gazette of India, 1921, Pt. II, p. 343.

<sup>5</sup> These words were substituted for the words "Gazette of India" by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

<sup>6</sup> These words were substituted for the words "British India" by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

(Schedule I.—*Ad valorem fees.*)

## ISCHEDULE I.

*Ad valorem fees.*

Number.		Proper Fee.
<p>I. <sup>1</sup>Plaint <sup>2</sup>written statement pleading a set off or counter-claim; or memorandum of appeal (not otherwise provided for in this Act) <sup>2</sup>[or of cross-objection] presented to any Civil or Revenue Court except those mentioned in section 3.</p>	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Twenty rupees.

To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this Schedule.

<sup>1</sup> For amendments to Sch. I in its application to Bombay see s. 3 of the Court-fees (Bombay Amendment) Act, 1923 (Bom. Act 3 of 1923).

<sup>2</sup> These words were inserted by s. 155 and the Fourth Schedule of the Code of Civil Procedure (Act 5 of 1908).

(Schedule I.—*Ad valorem fees.*)SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.	— —	Proper Fee.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Twenty rupees.
1. <sup>1</sup> Plaint, etc.— <i>contd.</i>	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	
2. <sup>2</sup> Plaint <sup>1</sup> *** in a suit for possession under <sup>2</sup> [the Specific Relief Act, 1877, section 9].	.....	A fee of one-half the amount prescribed in the foregoing scale.
3. [ <i>Repealed by Act VIII of 1871</i> ].		
4. Application for review of judgment, <sup>3</sup> if presented on or after the ninetieth day from the date of the decree	.....	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, <sup>3</sup> if presented before the ninetieth day from the date of the decree.	.....	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority— (a)—If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas.

\* To ascertain the proper fee leviable on the institution of a suit, *see* the table annexed to this Schedule.

<sup>1</sup> The words "or memorandum of appeal" were repealed by the Court-fees Act Amendment Act, 1870 (20 of 1870), *infra*.

<sup>2</sup> These words were substituted for the words and figures "Act No. 14 of 1859 (*to provide for the limitation of suits*)" by the Amending Act, 1891 (12 of 1891).

<sup>3</sup> As to application for review of judgment, *see* the Code of Civil Procedure (Act 5 of 1908)



(Schedule I.—*Ad valorem fees*.)SCHEDULE I.—*contd.**Ad valorem fees*—*contd.*

Number.	—	Proper Fee.
6. Copy, etc.— <i>contd.</i>	(b)—If such amount or value exceeds fifty rupees. When such judgment or order is passed by a High Court.	Eight annas. One rupee.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court— (a)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees. (b)—If such amount or value exceeds fifty rupees. When such decree or order is made by a High Court.	Eight annas. One rupee. Four rupees.
1 of 1879. 8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1879, when left by any party to a suit or proceeding in place of the original withdrawn.	(a)—When the stamp-duty chargeable on the original does not exceed eight annas. (b)—In any other case.	The amount of the duty chargeable on the original. Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [ <i>Repealed by the Guardians and Wards Act, 1890 (VIII of 1890).</i> ]	....	....
11. Probate of a will or letters of administration with or without will annexed.	<sup>2</sup> [When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.

<sup>1</sup> See now the Indian Stamp Act, 1899 (2 of 1899).<sup>2</sup> This Article was substituted for the original Article 11 by the Succession Certificate Act, 1889 (7 of 1889), s. 13 (1).<sup>3</sup> These items were substituted by s. 2 (i) of the Court-fees (Amendment) Act, 1910 (7 of 1910).

(Schedule I.—*Ad valorem fees.*)SCHEDULE I.—*contd.**Ad valorem fees*—*contd.*

Number.	—	Proper Fee.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.	Two and one-half per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.]
11. Probate, etc.— <i>contd.</i>	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
VII of 1889.	112. Certificate under the Succession Certificate Act, 1889. <sup>2</sup>	Two per centum on the amount or value of any debt or security specified in the certificate under section 3 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

<sup>2</sup> This Article was substituted for the original Art. 12 by the Succession Certificate Act 1889 (7 of 1889), s. 13 (i).

(Schedule I.—*Ad valorem fees.*)SCHEDULE I—*contd.**Ad valorem fees*—*contd.*

Number.	—	Proper Fee.
VII of 1889.	<p data-bbox="240 425 523 494">12A. Certificate under the Regulation of the Bombay Code<sup>2</sup>, No. VIII of 1827.</p> <p data-bbox="542 425 819 477"><sup>3</sup>(1) As regards debts and securities</p> <p data-bbox="542 598 819 668">(2) As regards other property in respect of which the certificate is granted—</p> <p data-bbox="572 685 819 789">When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees.</p> <p data-bbox="572 807 819 911">When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.</p> <p data-bbox="572 928 819 998">When such amount or value exceeds fifty thousand rupees.</p> <p data-bbox="535 1041 819 1128">When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.</p> <p data-bbox="535 1171 819 1223">When such amount or value exceeds twenty-five rupees.</p>	<p data-bbox="837 425 1127 581">The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889<sup>3</sup>, or in respect of an extension of such a certificate, as the case may be.</p> <p data-bbox="837 685 1127 737">Two per centum on such amount or value.</p> <p data-bbox="837 807 1127 859">Two and one-half per centum on such amount or value.</p> <p data-bbox="837 928 1127 980">Three per centum on such amount or value.]</p> <p data-bbox="837 1041 1127 1076">Two rupees.</p> <p data-bbox="837 1171 1127 1223">The fee leviable on a memorandum of appeal.</p>
XVIII of 1884. XXV of 1899.	<p data-bbox="240 1041 523 1258"><sup>4</sup>13. Application to the High Court of Judicature at Lahore for the exercise of its jurisdiction under section 44 of the Punjab Courts Act, 1918, or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 81 of the Punjab Tenancy Act, 1887</p>	

<sup>1</sup> This Article was substituted for the original Art. 12-A by the Succession Certificate Act, 1889 (7 of 1889) s. 13 (i).

<sup>2</sup> Bom. Code, Vol. I.

<sup>3</sup> These items were substituted by s. 2 (ii) of the Court-fees (Amendment) Act, 1910 (7 of 1910).

<sup>4</sup> Originally Inserted by the Punjab Courts Act, 1884 (18 of 1884), s. 71, as amended by the Punjab Courts Act, 1899 (25 of 1899), s. 6. Article 13 was repealed in Punjab by s. 5 of the Punjab Courts (Amendment) Act, 1912 (Punjab Act I of 1912), and in the North-West Frontier Province, by the Third Schedule of the North-West Frontier Province Law and Justice Regulation, 1901 (Regulation VII of 1901); but it has since been received for both areas in its present form by the Court-fees (Punjab Amendment) Act, 1922 (Punjab Act VII of 1922).

Schedule I of the Repealing and Amending Act, 1919 (18 of 1919).

(Schedule I.—*Ad valorem fees. Table of rates of ad valorem fees, etc.*)SCHEDULE I—*contd.**Ad valorem fees—concl'd.*XIV of  
1882.

IX of 1887.

Number.	—	Proper Fee.
<sup>1</sup> [14. Application to the <sup>2</sup> [High Court of Judicature at Rangoon] for the exercise of its revisional jurisdiction under section 622 of the <sup>3</sup> Code of Civil Procedure or section 25 of the Provincial Small Causes Courts Act, 1887. <sup>4</sup> [or section 25 of the Rangoon Small Cause Court Act, 1920]. <sup>5</sup> 15. } * i	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.  When such amount or value exceeds twenty-five rupees	Two rupees.  The fee leviable on a memo- randum of appeal.

*Table of rates of ad valorem fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
..	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0

<sup>1</sup> Substituted by the Lower Burma Courts Act, 1900 (6 of 1900), s. 47, and Schedule I. Art. 14 was originally inserted by the Lower Burma Courts Act, 1889 (11 of 1889), s. 84.<sup>2</sup> These words were substituted for the words "the Chief Court of Lower Burma" by s. 2 & Schedule I, of the Repealing and Amending Act, 1923, (11 of 1923).<sup>3</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908).<sup>4</sup> These words shall be deemed to have been inserted by the Burma Courts (Amendment) Act, 1926 (Bur. Act. III of 1926).<sup>5</sup> Repealed by S. 3 & 2nd Sch. of the Repealing and Amending Act, 1923, (11 of 1923).

(Schedule I.—Table of rates of ad valorem fees, etc.)

## SCHEDULE I—contd.

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs. 70	Rs. 75	Rs. A. P. 5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 8 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	230	17 4 0
230	240	18 0 0
240	250	18 12 0
250	260	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0
310	320	24 0 0
320	330	24 12 0

(Schedule I.—Table of rates of ad valorem fees, etc.)

## SCHEDULE I—contd.

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs. 330	Rs. 340	Rs. A. P. 25 8 0
340	350	26 4 0
350	360	27 0 0
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0
390	400	30 0 0
400	410	30 12 0
410	420	31 8 0
420	430	32 4 0
430	440	33 0 0
440	450	33 12 0
450	460	34 8 0
460	470	35 4 0
470	480	36 0 0
480	490	36 12 0
490	500	37 8 0
500	510	38 4 0
510	520	39 0 0
520	530	39 12 0
530	540	40 8 0
540	550	41 4 0
550	560	42 0 0
560	570	42 12 0
570	580	43 8 0
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 8 0

(Schedule I.—Table of rates of ad valorem fees, etc.)

## SCHEDULE I—contd.

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs. 620	Rs. 630	Rs. A. P. 47 4 0
630	640	48 0 0
640	650	48 12 0
650	660	49 8 0
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0
780	790	59 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0
830	840	63 0 0
840	850	63 12 0
850	860	64 8 0
860	870	65 4 0
870	880	66 0 0
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0

(Schedule I.—Table of rates of ad valorem fees, etc.)

## SCHEDULE I—contd.

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee.
Rs. 910	Rs. 920	Rs. A. P. 69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
960	970	72 12 0
970	980	73 8 0
980	990	74 4 0
990	1,000	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1,300	90 0 0
1,300	1,400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,900	2,000	125 0 0
2,000	2,100	130 0 0
2,100	2,200	135 0 0
2,200	2,300	140 0 0
2,300	2,400	145 0 0
2,400	2,500	150 0 0
2,500	2,600	155 0 0
2,600	2,700	160 0 0
2,700	2,800	165 0 0
2,800	2,900	170 0 0
2,900	3,000	175 0 0



(Schedule I.—Table of rates of ad valorem fees, etc.)

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—*contd.*

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs. 3,000	Rs. 3,100	Rs. A. P. 180 0 0
3,100	3,200	185 0 0
3,200	3,300	190 0 0
3,300	3,400	195 0 0
3,400	3,500	200 0 0
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0
4,700	4,800	265 0 0
4,800	4,900	270 0 0
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0

(Schedule I.—Table of rates of ad valorem fees, etc.)

## SCHEDULE I—contd.

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs. 7,250	Rs. 7,500	Rs. A. P. 375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0
9,750	10,000	475 0 0
10,000	10,500	490 0 0
10,500	11,000	505 0 0
11,000	11,500	520 0 0
11,500	12,000	535 0 0
12,000	12,500	550 0 0
12,500	13,000	565 0 0
13,000	13,500	580 0 0
13,500	14,000	595 0 0
14,000	14,500	610 0 0
14,500	15,000	625 0 0
15,000	15,500	640 0 0
15,500	16,000	655 0 0
16,000	16,500	670 0 0
16,500	17,000	685 0 0
17,000	17,500	700 0 0
17,500	18,000	715 0 0
18,000	18,500	730 0 0
18,500	19,000	745 0 0

(Schedule I.—Table of rates of ad valorem fees, etc.)

SCHEDULE I—contd.

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
19,000	19,500	760 0 0
19,500	20,000	775 0 0
20,000	21,000	795 0 0
21,000	22,000	815 0 0
22,000	23,000	835 0 0
23,000	24,000	855 0 0
24,000	25,000	875 0 0
25,000	26,000	895 0 0
26,000	27,000	915 0 0
27,000	28,000	935 0 0
28,000	29,000	955 0 0
29,000	30,000	975 0 0
30,000	32,000	995 0 0
32,000	34,000	1,015 0 0
34,000	36,000	1,035 0 0
36,000	38,000	1,055 0 0
38,000	40,000	1,075 0 0
40,000	42,000	1,095 0 0
42,000	44,000	1,115 0 0
44,000	46,000	1,135 0 0
46,000	48,000	1,155 0 0
48,000	50,000	1,175 0 0
50,000	55,000	1,200 0 0
55,000	60,000	1,225 0 0
60,000	65,000	1,250 0 0
65,000	70,000	1,275 0 0
70,000	75,000	1,300 0 0
75,000	80,000	1,325 0 0
80,000	85,000	1,350 0 0

(Schedule I.—Table of rates of ad valorem fees, etc.)

SCHEDULE I—*contd.**Table of rates of ad valorem fees, etc.—contd.*

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
85,000	90,000	1,375	0	0
90,000	95,000	1,400	0	0
95,000	1,00,000	1,425	0	0
1,00,000	1,05,000	1,450	0	0
1,05,000	1,10,000	1,475	0	0
1,10,000	1,15,000	1,500	0	0
1,15,000	1,20,000	1,525	0	0
1,20,000	1,25,000	1,550	0	0
1,25,000	1,30,000	1,575	0	0
1,30,000	1,35,000	1,600	0	0
1,35,000	1,40,000	1,625	0	0
1,40,000	1,45,000	1,650	0	0
1,45,000	1,50,000	1,675	0	0
1,50,000	1,55,000	1,700	0	0
1,55,000	1,60,000	1,725	0	0
1,60,000	1,65,000	1,750	0	0
1,65,000	1,70,000	1,775	0	0
1,70,000	1,75,000	1,800	0	0
1,75,000	1,80,000	1,825	0	0
1,80,000	1,85,000	1,850	0	0
1,85,000	1,90,000	1,875	0	0
1,90,000	1,95,000	1,900	0	0
1,95,000	2,00,000	1,925	0	0
2,00,000	2,05,000	1,950	0	0
2,05,000	2,10,000	1,975	0	0
2,10,000	2,15,000	2,000	0	0
2,15,000	2,20,000	2,025	0	0
2,20,000	2,25,000	2,050	0	0
2,25,000	2,30,000	2,075	0	0

(Schedule I.—Table of rates of *ad valorem* fees, etc.)SCHEDULE I—*concl'd.*Table of rates of *ad valorem* fees, etc.—*concl'd.*

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
2,30,000	2,35,000	2.100	0	0
2,35,000	2,40,000	2.125	0	0
2,40,000	2,45,000	2.150	0	0
2,45,000	2,50,000	2.175	0	0
2,50,000	2,55,000	2.200	0	0
2,55,000	2,60,000	2.225	0	0
2,60,000	2,65,000	2.250	0	0
2,65,000	2,70,000	2.275	0	0
2,70,000	2,75,000	2.300	0	0
2,75,000	2,80,000	2.325	0	0
2,80,000	2,85,000	2.350	0	0
2,85,000	2,90,000	2.375	0	0
2,90,000	2,95,000	2.400	0	0
2,95,000	3,00,000	2.425	0	0
3,00,000	3,05,000	2.450	0	0
3,05,000	3,10,000	2.475	0	0
3,10,000	3,15,000	2.500	0	0
3,15,000	3,20,000	2.525	0	0
3,20,000	3,25,000	2.550	0	0
3,25,000	3,30,000	2.575	0	0
3,30,000	3,35,000	2.600	0	0
3,35,000	3,40,000	2.625	0	0
3,40,000	3,45,000	2.650	0	0
3,45,000	3,50,000	2.675	0	0
3,50,000	3,55,000	2.700	0	0
3,55,000	3,60,000	2.725	0	0
3,60,000	3,65,000	2.750	0	0
3,65,000	3,70,000	2.775	0	0
3,70,000	3,75,000	2.800	0	0
3,75,000	3,80,000	2.825	0	0
3,80,000	3,85,000	2.850	0	0
3,85,000	3,90,000	2.875	0	0
3,90,000	3,95,000	2.900	0	0
3,95,000	4,00,000	2.925	0	0
4,00,000	4,05,000	2.950	0	0
4,05,000	4,10,000	2.975	0	0
4,10,000	..	3.000	0	0

## (Schedule II.—Fixed fees.)

## SCHEDULE II.

## Fixed fees.

Number.	—	Proper Fee.
1. Application or petition	<p>(a)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;</p> <p>or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;</p> <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;</p> <p>or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, <sup>1</sup> * * *</p> <p>or to any Court of Small Causes constituted under Act <sup>2</sup> No. XI of 1865 or under Act <sup>3</sup> No. XVI of 1868, section 20 or to a Collector or other officer of revenue in relation to any suit or case in which the</p>	One anna.

<sup>1</sup>The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859" were repealed by the Cantonments Act. 13 of 1889.

<sup>2</sup>See now the Provincial Small Causes Courts Act, 1887 (9 of 1887), by which Act 11 of 1865 was repealed.

<sup>3</sup>See now s. 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), Ben. Code, Vol. I, U. P. Code, Vol. I, B. and O. Code, Vol. I, & Assam Code, Vol. I.

## (Schedule II.—Fixed fees.)

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
1. Application or petition— <i>contd.</i>	<p>amount or value of the subject-matter is less than fifty rupees ; or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.</p> <p>(b)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code,<sup>1</sup> arrest without warrant, and presented to any Criminal Court ; or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ; or to deposit in Court revenue or rent ; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.</p> <p>(c)—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the exe-</p>	<p>One anna.</p> <p>Eight annas.</p> <p>One rupee.</p>

<sup>1</sup> See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

## (Schedule II.—Fixed fees.)

SCHEDULE II.—*contd.**Fixed fees—contd.*

Number.		Proper fee.
1. Application or petition— <i>contd.</i>	entive administration of a Division and not otherwise provided for by this Act.	
	(d)—When presented to a High Court.	Two rupees.
1 <sup>1</sup> [A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of article 1 of this Schedule.]
2. Application for leave to sue as a pauper.	....	Eight annas.
3. Application for leave to appeal as a pauper.	(a)—When presented to a District Court.	One rupee.
	(b)—When presented to a Commissioner or a High Court.	Two rupees.
4. Plaint or memorandum of appeal in a suit to obtain possession under <sup>2</sup> Act No. XVI of 1838, or <sup>3</sup> [the 'Mamlatdars' Courts Act, 1876]		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		
<sup>4</sup> [6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908 and not otherwise provided for by this Act.]	.....	Eight annas.
7. Undertaking under section 49 of the Indian Divorce Act.		
8. [Rep. by the Repealing and Amending Act, 1891 (XII of 1891).]		
9. [Repealed by Act XII of 1891.]		
10. Mukhtarnāma or Wak-ālatnāma.	When presented for the conduct of any one case—	
	(a)—to any Civil or Criminal Court other than a High Court, or to any	Eight annas.

<sup>1</sup> This article was inserted by s 2 of the Court-fees (Amendment) Act, 1911 (14 of 1911).<sup>2</sup> Bom. Code, Vol. I.<sup>3</sup> These words were substituted for the words and figures "Bombay Act 5 of 1864" (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law), by the Amending Act, 1891 (12 of 1891).<sup>4</sup> See now the Bombay Mamlatdars' Courts Act, 1903 (Bom. Act 2 of 1906), Bom. Code, Vol. IV.<sup>5</sup> This article was substituted by s. 2 of the Second Repealing and Amending Act, 1914 (17 of 1914).<sup>6</sup> *Supra.*



## (Schedule II.—Fixed fees.)

SCHEDULE II.—*contd.**Fixed fees—contd.*

Number.		Proper Fee
10. Mukhtarnāma or Wakālat-nāma— <i>concl.</i> <sup>1</sup> .	Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number,	
	(b)—to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	One rupee.
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority,	Two rupees.
11. Memorandum of appeal when the appeal is not * * * from a decree or an order having the force of a decree, and is presented—	(a)—to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(b) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat.		
13. Application under Act <sup>2</sup> No. X of 1859, section 26, or <sup>3</sup> Bengal Act No. VI of 1862, section 9, or <sup>4</sup> Bengal Act No. VIII of 1869, section 37.		Five rupees.

<sup>1</sup> The words "from an order rejecting a plaint or" were omitted by s. 155 (Sch. 4) of the Code of Civil Procedure (Act 5 of 1908).

<sup>2</sup> Act X of 1859 was repealed by the Bengal Tenancy Act, 1885 (8 of 1885), Ben. Code, B. & O. Code, Vol. I, in those portions of the Lower Provinces to which that Act extends and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. Act, 1 of 1879), (now repealed by the Chota Nagpur Tenancy Act, 1908, (Ben. Act, 6 of 1908) B. & O. Code, Vol. III), in the Province of Agra by Act XVIII of 1873; and in the Central Provinces, by the Central Provinces Tenancy Act, 1883 (IX of 1883), C. P. Code.

<sup>3</sup> Bengal Act 6 of 1862 was repealed by the Bengal Tenancy Act, 1885 (8 of 1885) so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. Act, 1 of 1879), (now repealed by the Chota Nagpur Tenancy Act, 1908 (Ben. Act, 6 of 1908) B. & O. Code, Vol. III).

<sup>4</sup> Bengal Act 8 of 1869 was repealed by the Bengal Tenancy Act, 1885 (8 of 1885), Ben. Code, Vol. I.

## (Schedule II.—Fixed fees.)

## SCHEDULE II—concl'd.

## Fixed fees—concl'd.

Number.		Proper Fee.
XXI of 1866.	14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866. <sup>1</sup>	Five rupees.
	15. [Rep. Act V of 1908.]	
	16. [Repealed by Act VI of 1889, s. 18 (1)].	
	17. Plaint or memorandum of appeal in each of the following suits:—	
	i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:	
	ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates:	
	iii. to obtain a declaratory decree where no consequential relief is prayed:	
	iv. to set aside an award:	
	v. to set aside an adoption:	Ten rupees.
	vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	
	18. Application under section 32 <sup>2</sup> of the Code of Civil Procedure. <sup>3</sup>	
V of 1908.	<sup>3</sup> [19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.]	
IV of 1869.	20. Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	
XV of 1865.	21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	Twenty rupees

<sup>1</sup> *Supra.*<sup>2</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Second Schedule.<sup>3</sup> Substituted by s. 155 (4th Sch.) of the Code of Civil Procedure (Act 5 of 1908) for the original entry which was as follows:—"Agreement under section 323 of the same Code."<sup>4</sup> *Supra.*<sup>5</sup> *Supra.*

## (Schedule III.—Form of Valuation.)

SCHEDULE III.<sup>1</sup>

(See section 19 I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

*Re Probate of the Will of  
and credits of*

*(or administration of the property  
,) deceased.*

I

{ solemnly affirm  
make oath }

and say that I am the executor (or one of the executors or one of the next-of-kin) of \_\_\_\_\_, deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of \_\_\_\_\_.

## ANNEXURE A.

## VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF \_\_\_\_\_, DECEASED.

Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc.

*(State estimated value according to best of Executor's or Administrator's belief.)*

Property in Government securities transferable at the Public Debt Office.

*(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)*

Immoveable property consisting of

*(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)*

Leasehold property

*(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)*

Rs.

A.

<sup>1</sup> This schedule was inserted by s. 3 of the Court-fees Amendment Act, 1899 (11 of 1899). The original Schedule III was repealed by Act 14 of 1870.

## (Schedule III.—Form of Valuation.)

SCHEDULE III.—*contd.*

	Rs.	A.	P.
Property in public companies ( <i>State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.</i> )			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money. ( <i>State the amount of the whole; also the interest separately, calculating it to the time of making the application.</i> )			
Book debts . . . . . ( <i>Other than bad</i> )			
Stock in trade . . . . . ( <i>State the estimated value, if any.</i> )			
Other property not comprised under the foregoing heads ( <i>State the estimated value, if any.</i> )			
<b>TOTAL .</b>			
Deduct amount shown in Annexure B not subject to duty			
<b>NET TOTAL .</b>			
<b>ANNEXURE B.</b>			
<b>SCHEDULE OF DEBTS, ETC.</b>			
	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate.			
Amount of funeral expenses . . . . .			
Amount of mortgage incumbrances . . . . .			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty . . . . .			
<b>TOTAL .</b>			

ACT No. VIII of 1870.<sup>1</sup>

[18th March 1870.]

## An Act for the Prevention of the murder of Female Infants.

## Preamble.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

## Power to take measures under Act in particular districts.

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, \* \* \* declare by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family or persons.<sup>3</sup>

The notification shall define the limits of such district, or shall specify the class, or family or persons to whom such notification is to be deemed to apply.

## Power to make rules.

<sup>2</sup> 2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section 3, from time to time to make rules consistent with this Act for all or any of the following purposes:—

- (1) for making and maintaining registers of births, marriages and deaths occurring in such district, or in or among the class, family or persons to whom such notification has been made applicable; and for making, from time to time, a census of

<sup>1</sup> Short title, The Female Infanticide Prevention Act, 1870. See the Indian Short Titles Act, 1897 (14 of 1897).

For the Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 15; for Proceedings in Council, see *ibid*, Supplement, pp. 53, 131 and 473.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhál-bhum and the Kólhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the district of Lohárdaga is now called the Ranchi district, see Calcutta Gazette, 1899, Pt. I, p. 44.

As to the operation of the Act in the Bombay Presidency, see note to s. 7, *infra*.

<sup>2</sup> The words "with the previous sanction of the Governor General of India in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

<sup>3</sup> For notification issued under this power in respect of certain classes of persons in the Ahmedabad and Kaira Districts of the Bombay Presidency, see Bom. R. & O.

For notification issued under this power in respect of various localities in the Province of Agra, see U. P. List of Local Rules and Orders.

<sup>4</sup> For rules made under the section for the United Provinces of Agra and Oudh, see U. P. List of Local Rules and Orders.

For rules made under this section by the Government of the Punjab in respect of all Jats resident in certain villages of the Jullunder District, see Gazette of India, 1901, Pt. I, p. 295.

such persons, or of any other persons residing within such district:<sup>1</sup>

- (2) for the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family or persons, or for carrying out any of the provisions of this Act:
- (3) for prescribing how and by whom information shall be given to the proper officers of all births, marriages and deaths occurring or about to occur in such district, or in or among such class, family or persons:
- (4) for the regulation and limitation of expenses<sup>2</sup> incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith:
- (5) for regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable:<sup>3</sup>
- (6) for defining the duties of any officer or servant appointed to carry out any rule made under this section.

3. No rule or alteration made under section 2 shall take effect until it shall have been<sup>4</sup> \* \* \* published<sup>5</sup> \* \* \* in the local Gazette. Confirmation and publication of rules.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Punishment for breach of rules.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence. Saving of prosecutions under other laws.

<sup>1</sup> For rules made by the Government of Bombay in respect of the classes referred to in the third note on the preceding page, *see* Bom. R. & O.

<sup>2</sup> For rules limiting marriage expenses among the classes referred to *supra*, *see* *ibid*.

<sup>3</sup> As to the application of funds collected under the Act or the rules made thereunder for the educational benefit of those classes in the Ahmedabad District to whom the Act has been applied, *see* s. 1 of Bombay Act 3 of 1897 (*to amend Act 8 of 1870*), Bom. Code, Vol. III.

<sup>4</sup> The words "confirmed by the Governor General of India in Council and" were omitted by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

<sup>5</sup> The words "in the Gazette of India and also" were omitted by *ibid*.

**Power to  
place neglect-  
ed children  
under super-  
vision.**

6. If it appears to the Magistrate of the District that any person, to whom the notification mentioned in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the District may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 61 <sup>1</sup> of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 316 <sup>2</sup> of the same Code.

**Extent of  
Act.**

<sup>3</sup>7. This Act shall, in the first instance, extend only to the North Western Provinces, to the Punjab and to Oudh; but the Governor General of India in Council may by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India <sup>4</sup>[and the Local Government of any other part of British India may, by notification published in the local official Gazette, extend it to any part of the territories under the administration of that Local Government].

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<sup>1</sup> See now Act 5 of 1898, ss. 386 and 387.

<sup>2</sup> See now Act 5 of 1898, s. 488.

<sup>3</sup> The Act has been declared to extend and to have extended from the 21st December, 1870, to the Presidency of Bombay, by s. 2 of Bom. Act III of 1897 (to amend Act VIII of 1870), Bom. Code, Vol. III.

<sup>4</sup> These words were substituted for the words "and the Governor of Madras, etc.," by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

ACT No. XX of 1870.<sup>1</sup>

[5th July 1870.]

## An Act to correct two clerical errors in the Court-fees Act, 1870.

FOR the purpose of correcting two clerical errors in the Court-fees Act, 1870;<sup>2</sup> It is hereby enacted as follows:—

1. Section 15 of the said Act shall be read as if, for the words “plaint or memorandum of appeal,” the word “application” were substituted; and in Schedule I to the said Act annexed, No. 2 shall be read as if the words “or memorandum of appeal” were omitted therefrom.

Corrections of  
Act VII of  
1870, section  
15 and  
Schedule I  
No. 2.

<sup>1</sup> Short title, The Court-fees Act, 1870, Amendment Act, 1870. See the Indian Short Titles Act, 1897 (14 of 1897).

For the Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 166; for Proceedings in Council, see *ibid*, Supplement, pp. 902 and 912.

This Act as amending Act 7 of 1870 has been declared in force in Upper Burma generally (except the Shan States), see s. 4 (1) and the First Schedule to the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I.

It is included in the Schedule to the Santhál Parganas Settlement Regulation (3 of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

the District of Hazáribágh. See Gazette of India, 1881, Pt. I, p. 507.

the District of Lohárdaga. See Gazette of India, 1881, Pt. I, p. 508.

the Pargana of Dhálbhum in the District of Singbhum. See Gazette of India, 1881, Pt. I, p. 570.

[The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44.]

The North-Western Provinces, Tarai. See Gazette of India, 1876, Pt. I, p. 505.

<sup>2</sup> *Supra*.



ACT No. XXVII OF 1870.<sup>1</sup>

[25th November 1870.]

## An Act to amend the Indian Penal Code.

**Preamble.** FOR the purpose of amending the Indian Penal Code; It is hereby **XLV of 1860**, enacted as follows:—

**Section 34.** 1. For section 34 of the said Code, the following section shall be substituted:—

**Liability for act done by several persons in furtherance of common intention.** “34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

**Section 40.** 2. For section 40 of the said Code the following section shall be substituted:—

**“Offence.”** “40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word ‘offence’ denotes a thing made punishable by this Code.

“In Chapter IV and in the following sections, namely, sections 64,<sup>2</sup> 65,<sup>2</sup> 66,<sup>2</sup> 67,<sup>3</sup> 71,<sup>2</sup> 190, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203,

<sup>1</sup> Short title, The Indian Penal Code Amendment Act, 1870. See the Indian Short Titles Act, 1897 (14 of 1897).

For the Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 279; for Proceedings in Council, see *ibid*, Supplement, pp. 1018, 1070, 1200 and 1311.

This Act, as amending Act 45 of 1860, has been declared in force in Upper Burma generally (except the Shan States), see s. 4 (1) and the First Schedule to the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I.

It has been declared in force in the Santhal Parganas—see Schedule to the Santhal Parganas Settlement Regulation (3 of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhan in the District of Singbhum. [The District of Lohárdaga included at this time the present District of Palamanu, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, see Cal. Gazette, 1899, Pt. I, p. 41]

See Gazette of India, 1881, Pt. I, p. 504.

The North-Western Provinces Taráí

*Idem* 1876, Pt. I, p. 505.

<sup>2</sup> These figures were inserted in the second clause of section 40 of the Indian Penal Code by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 1.

<sup>3</sup> These figures were inserted in the second clause of section 40 of the Indian Penal Code by the Indian Criminal Law Amendment Act, 1886 (10 of 1886), s. 21 (1).

211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329 330, 331, 347, 348, 388, 389, and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined :

" And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

3. Section 56 of the said Code shall be read as if the following proviso Section 56. were added thereto:—

" Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life."

Proviso as to sentence for term exceeding ten years but not for life.

4. After section 121 of the said Code the following section shall be inserted:—

" 121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121 or to deprive the Queen of the Sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years."

Conspiracy to commit offences punishable by section 121.

" *Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

5. [Rep. by the Repealing and Amending Act, 1903 (I of 1903).]

6. Section 131 of the said Code shall be read as if the following Explanation were added thereto:

Addition to section 131.

" *Explanation.*—In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War<sup>1</sup> contained in Act No. V of 1869."<sup>2</sup>

7. Sections 194 and 195. [Rep. by the Repealing and Amending Act, 1891 (XII of 1891).]

8. Sections 222 and 223 of the said Code shall be construed as if, after the word "offence," the following words were inserted (that is to say), "or lawfully committed to custody";

Sections 222 and 223.

<sup>1</sup> For power to Her Majesty to make Articles of War, see s. 69 of the Army Act (44 and 45 Vict., c. 58), Coll. Stat. Ind.

<sup>2</sup> See now the Indian Army Act, 1911 (8 of 1911).

and section 222 of the said Code shall be construed as if the following words were added thereto (that is to say), “or if the person was lawfully committed to custody.”

9. Section 225A. [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

10. After section 294, and before Chapter XV of the Indian Penal Code, the following section shall be inserted:—

XLV of 1860.

Keeping lottery-office.

“294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

“And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.”

11. Section 307 of the said Code shall be read as if the following clause were added thereto:—

Attempts by life-convicts.

“When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.”

12. After section 304 of the same Code, the following section shall be inserted:—

Causing death by negligence.

“304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Application of certain chapters of Penal Code.

13. The following chapters of the same Code, namely, IV (*General Exceptions*), V (*Of Abetment*) and XXIII (*Of Attempts to commit Offences*) shall apply to offences punishable under the said sections 121A, 294A and 304A, and the said Chapters IV and V shall apply to offences punishable under <sup>1</sup>[sections 124A and 225A and 225B].

14. *Order of Local Government necessary to prosecution under section 121A, 124A or 294A.* [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

Saving of special and local laws.

15. Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

16. *Addition to Code of Criminal Procedure.* [*Rep. by Act X of 1872.*]

17. *Repeal of enactments.* [*Rep. by Act X of 1872.*]

<sup>1</sup> The words and figures “section 124A and 225A and 225B” were substituted for the words and figures “said sections 124A and 225A” by the second Schedule to the Amending Act; 1891 (12 of 1891).

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ADDITION TO SCHEDULE TO CODE OF CRIMINAL PROCEDURE.

[*Repealed by Act X of 1872.*]

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[*Repealed by Act X of 1872.*]

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## THE CATTLE-TRESPASS ACT, 1871.

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SCHEDULE.  

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ACT No. I of 1871.<sup>1</sup>

[13th January 1871]

**An Act to consolidate and amend the law relating to Trespasses by Cattle.**

**Preamble.**

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

**Title and extent.**

**21.** (1) This Act may be called the Cattle-trespass Act, 1871; and  
(2) It extends to the whole of British India,<sup>3</sup> except the presidency-towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.<sup>4</sup>

\* \* \* \*

**Repeal of Acts.**

**2.** The Acts mentioned in the schedule hereto annexed are repealed.

<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 310; for Proceedings in Council, *see ibid*, Supplement, pp. 1150, 1200, 1290, and Supplement, 1871, p. 178.

<sup>2</sup> This section was substituted for the original s. 1 by s. 1 of the Cattle-trespass Act Amendment Act, 1891 (1 of 1891).

<sup>3</sup> This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), and Sch. I, Bur. Code; in the Hill District of Arakan by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, *ibid*; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B. & O. Code; in Angul and the Khondmals by the Angul Laws Regulation 1913 (3 of 1913), s. 3, *ibid*; in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), s. 2; and in the Chittagong Hill Tracts by notification under s. 4 (2) of the Chittagong Hill Tracts Regulation, 1900 (I of 1900), *see* Bengal Code, Volume IV, pp. 84-85. It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum [Gazette of India, 1881, Pt. I, p. 504; the District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44]; and the North-Western Provinces Taráí, Gazette of India, 1876, Pt. I, p. 505; the Scheduled Districts in Ganjam and Vizagapatam, *ibid*, 1899, Pt. I, p. 720.

It has been extended, by notification under s. 16 of the Burma Laws Act, 1898 (13 of 1898), to the Civil Station of Lashio in the State of North Hsenwi, Burma Gazette, 1898, Pt. I, p. 584.

It has been extended to the Civil Station of Taunggi in the State of Yawng Hwe, *ibid*, 1895, Pt. I, p. 550.

<sup>4</sup> For notification issued by the Government of the United Provinces under this power, *see* U. P. R. & O.

<sup>5</sup> Sub-section (3) of s. 1 was repealed by s. 3 and Second Schedule of the Repealing and Amending Act, 1914 (10 of 1914).

(Chapter I.—Preliminary. Chapter II.—Pounds and Pound-keepers.)

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act. References to repealed Acts.

All pounds established, pound-keepers appointed and villages determined under Act No. III of 1857<sup>1</sup> (*relating to trespasses by cattle*) shall be deemed to be respectively established, appointed and determined under this Act.

3. In this Act,—

“officer of police” includes also village-watchmen, and

Interpretation-clause.

“cattle” includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids,<sup>2</sup> [and

“local authority” means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

“local fund” means any fund under the control or management of a local authority.]

## CHAPTER II.

### POUNDS AND POUND-KEEPERS.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.<sup>4</sup> Establishment of pounds.

The village by which every pound is to be used shall be determined by the Magistrate of the District.<sup>5</sup>

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle. Control of pounds. Rates of charge for feeding impounded cattle.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper: Appointment of pound-keepers.

<sup>1</sup> Act 3 of 1857 is repealed by this Act—see Schedule.

<sup>2</sup> These words were added to s. 3 by s. 2 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

<sup>3</sup> Cf. definition in s. 3 (28) of the General Clauses Act, 1897 (10 of 1897), which s. 4 (2) applies to all Acts passed after the 14th January 1887.

<sup>4</sup> For rules and forms as to cattle-pounds in Sind, see Bom. R. & O.

<sup>5</sup> In the Civil Station of Lashio in the Shan State of North Hsenwi, the jurisdiction, powers and duties of a District Magistrate or of a Sub-divisional Magistrate, being a Magistrate of the first class, are exercised by the Superintendent of the Northern Shan States and every Assistant Superintendent of the Shan States, respectively—see Burma Gazette, 1898, Pt. I, p. 585.



(Chapter II.—Pounds and Pound-keepers. Duties of Pound-Keepers.  
Chapter III.—Impounding Cattle.)

*Ex officio*  
pound-keep-  
ers in Madras  
and Bombay.

<sup>1</sup>Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the police pátils, or (where there are no police pátils) the heads of villages shall be *ex officio* the keepers of village pounds.

Suspension  
or removal  
of pound-  
keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-  
keepers may  
hold other  
offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-  
keepers to  
be "public  
servants."

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

*Duties of Pound-keepers.*

To keep re-  
gisters and  
furnish re-  
turns.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.<sup>2</sup>

To register  
seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register,—

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take  
charge of and  
feed cattle.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

Cattle  
damaging  
land.

10. The cultivator or occupier of any land,  
or any person who has advanced cash for the cultivation of the crop  
or produce on any land,  
or the vendee or mortgagee of such crop or produce or any part  
thereof,

<sup>1</sup> In the application of the Act to the Presidency of Bombay a further proviso was inserted by s. 2 of Bom. Act, 9 of 1924, and this proviso was further substituted by a proviso under s. 2 of Bom. Act IV of 1926 and s. 6 of the Act was further amended by *ibid.*

<sup>2</sup> For notification prescribing registers and returns in Burma, see Burma Gazette, 1902, Pt. I, p. 791.

(Chapter III.—Impounding Cattle. Chapter IV.—Delivery or Sale of Cattle.)

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and <sup>1</sup>[send them or cause them to be sent within twenty-four hours] to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (a) re- Police to aid seizures. sistance to such seizures, and (b) rescues from persons making such seizures.

<sup>2</sup>11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of Cattle damaging public roads, canals and embankments. police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon,

and shall <sup>3</sup>[send them or cause them to be sent within twenty-four hours] to the nearest pound.

<sup>4</sup>[12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local Government in this behalf by notification in the official Gazette. Different scales may be prescribed for different local areas. Fines for cattle impounded.]

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government may direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound.]

## CHAPTER IV.

### DELIVERY OR SALE OF CATTLE.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle. Procedure when owner claims the cattle and pays fines and charges.

<sup>1</sup> These words were substituted for the words "take them or cause them to be taken without unnecessary delay" by s. 3 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

<sup>2</sup> As to the application of s. 11 to forests, see the Indian Forest Act, 1927 (17 of 1927), s. 70; the Burma Forest Act, 1902 (Bur. Act 4 of 1902), s. 49; the Assam Forest Regulation, 1891 (7 of 1891), s. 66, Assam Code; to railways, see the Indian Railways Act, 1890 (9 of 1890), s. 125 (4).

<sup>3</sup> These words were substituted for the words "take them without unnecessary delay" by s. 4 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

<sup>4</sup> This section was substituted by s. 2 of the Cattle-trespass (Amendment) Act, 1921 (17 of 1921).

In lieu of fines fixed under section 12, the Indian Forest Act, 1927 (17 of 1927) fixed a different scale of fines for cattle impounded under s. 70 of that Act, see s. 71 of the Indian Forest Act, 1927 (17 of 1927).

*(Chapter IV.—Delivery or Sale of Cattle.)*

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs :

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

Delivery to owner disputing legality of seizure but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,

(Chapter IV.—Delivery or Sale of Cattle. Chapter V.—Complaints of  
Illegal Seizure or Detention.)

(e) the proceeds of sale, and

(f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account. Receipt.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted. Disposal of fines, expenses and surplus proceeds of sales.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid— Application of fines and unclaimed proceeds of sale.

(a) the salaries allowed to pound-keepers under the orders of the Local Government;

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus<sup>1</sup> (if any) shall be applied under orders of the Local Government to the construction and repair of roads and bridges and to other purposes of public utility.

19. No officer of police or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act. Officers and pound-keepers not to purchase cattle at sales under Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court. Pound-keepers when not to release impounded cattle.

## CHAPTER V.<sup>2</sup>

### COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, Power to make complaints.

<sup>1</sup> As to the crediting of this surplus to local funds, *see* s. 31, *infra*.

<sup>2</sup> This Chapter was substituted for the original Ch. V by s. 6 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

(Chapter V.—Complaints of Illegal Seizure or Detention. Chapter VI.—Penalties.)

may, at any time within ten days from the date of the seizure, make a complaint<sup>1</sup> to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Procedure on complaint.

**21.** The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

Compensation for illegal seizure or detention.

**22.** If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle,

Release of cattle.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Recovery of compensation.

**23.** The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.<sup>2</sup>

## CHAPTER VI.

### PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

**24.** Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

<sup>1</sup> The term "offence" as defined by s. 4 (v) of the Code of Criminal Procedure, 1898 (5 of 1898), includes any act in respect of which a complaint may be made under this section.

Offences under this section may be tried in a summary way, see Act 5 of 1898, s. 260 (1) (m).

<sup>2</sup> See ss. 63 to 70 of the Indian Penal Code (Act 45 of 1860), and s. 386 of the Code of Criminal Procedure, 1898 (5 of 1898), *cf.* also, s. 25 of the General Clauses Act, 1897 (10 of 1897).

## (Chapter VI.—Penalties. Chapter VII.—Suits for Compensation.)

**25.** Any fine imposed <sup>2</sup>[under the next following section or] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Recovery of penalty for mischief committed by causing cattle to trespass.

**26.** Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, <sup>3</sup>by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

Penalty for damage caused to land or crops or public roads by pigs.

<sup>4</sup>[The Local Government, by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described<sup>5</sup> in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.]

\* \* \* \* \*

**27.** Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Penalty on pound-keeper failing to perform duties.

Such fines may be recovered by deductions from the pound-keeper's salary.

**28.** All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

Application of fines recovered under section 25, 26 or 27.

## CHAPTER VII.

## SUITS FOR COMPENSATION.

**29.** Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

Saving of right to sue for compensation.

<sup>1</sup> As to the application of s. 25 in the case of cattle-trespassing on a railway, see the Indian Railways Act, 1890 (9 of 1890), s. 125 (3).

<sup>2</sup> These words were inserted by s. 7 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

<sup>3</sup> "Public road" in s. 26 includes a railway—see the Indian Railways Act, 1890 (9 of 1890), s. 125 (4).

<sup>4</sup> This paragraph was added to s. 26 by s. 8 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

<sup>5</sup> For notification issued under s. 26, see different Local Rules and Orders.

<sup>6</sup> The last paragraph of s. 26 was repealed by the Repealing and Amending Act, 1914 (10 of 1914).

(Chapter VII.—Suits for Compensation. Chapter VIII.—Supplemental.)

**Set-off.**

**30.** Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

## CHAPTER VIII.<sup>1</sup>

### SUPPLEMENTAL.

Power for Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

**31.** The Local Government may, from time to time, by notification in the official Gazette,—

(a) transfer to any local authority<sup>2</sup> within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or

(b) direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds<sup>2</sup> as may be formed for any local area or local areas comprised in that district,

3 \* \* \*

## SCHEDULE.

(See section 2.)

Number and year.	Title of Act.
III of 1857	An Act relating to trespasses by cattle.
V of 1860	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861	An Act to amend Act III of 1857 (relating to trespasses by cattle).

<sup>1</sup> Ch. VIII was added by the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891), s. 9.

<sup>2</sup> For special enactments *see*, as to the Central Provinces, the Central Provinces Local Self-government Act, 1883 (1 of 1883), s. 9, cl. (f), and s. 23 (1), cl. (c), C. P. Code; and as to the Punjab, the Punjab District Boards Act, 1883 (20 of 1883), s. 20, cl. (n), P. and N.-W. F. Code.

<sup>3</sup> The words "and may from time to time, by notification in the official Gazette, cancel or vary any notification under this section" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

## THE PRISONERS ACT, 1871.

ACT No. V OF 1871.

1 \* \* \* \* \*

<sup>2</sup>15. Any warrant of commitment under Regulation III of 1818<sup>3</sup> of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819<sup>4</sup> of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827<sup>5</sup> of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850<sup>6</sup> (*for the better custody of State Prisoners*), and Act No. III of 1858<sup>6</sup> (*to amend the Law relating to the arrest and detention of State Prisoners*).

Warrants under Regulations for confinement of State prisoners.

1 \* \* \* \* \*

## THE PENSIONS ACT, 1871.

ACT No. XXIII OF 1871.<sup>7</sup>

[8th August 1871.]

An Act to consolidate and amend the law relating to Pensions and Grants by Government of money or land-revenue.

WHEREAS it is expedient to consolidate and amend the law relating

Preamble.

<sup>1</sup> The whole of this Act except section 15 was repealed by the Prisoners Act, 1900 (3 of 1900).

<sup>2</sup> This section is in force in the Santhal Parganas, see the Santhal Parganas Settlement Regulation, 1872 (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3. B. & O. Code, Vol. I, and s. 15 in Angul and the Khandmals, see the Angul Laws Regulation, 1913 (3 of 1913), s. 3, *ibid*.

<sup>3</sup> Short title, 'The Bengal State Prisoners' Regulation, 1818, Ben. Code, Vol. I.

<sup>4</sup> Mad. Code, Vol. I.

<sup>5</sup> Bom. Code, Vol. I.

<sup>6</sup> Short titles, The State Prisoners Act, 1850, and The State Prisoners Act, 1858, respectively.

<sup>7</sup> For the Statement of Objects and Reasons, see Gazette of India, 1871, Pt. V, p. 141; for Proceedings in Council, see *ibid*, 1871, Supplement, pp. 314, 401, 683, 1056, 1147.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code; Vol. I.

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code.

It is included in the Schedule to the Santhal Parganas Settlement Regulation, 1872 (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. See Gazette of India, 22nd October, 1881, Pt. I, p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894. The District of Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

The Act applies to certain allowances known as the Oudh Wasikas as if they were pensions of the classes referred to in sections 4 and 11 of the Act. See the Oudh Wasikas Act, 1886 (21 of 1886), s. 2.



(I.—*Preliminary.* II.—*Rights to Pensions.*)

to pensions and grants by Government of money or land-revenue; It is hereby enacted as follows:—

*I.—Preliminary.*

Short title.

1. This Act may be called the Pensions Act, 1871.

Extent of Act.

It extends to the whole of British India;

1 2 3 4 5 6 7 8 9 10 11 12

2 \* + \* \*

Enactments repealed.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

Saving of rules.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

Interpretation-section.

3. In this Act, the expression "grant of money or land-revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

*II.—Rights to Pensions.*

Bar of suits relating to pensions.

<sup>3</sup>4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

Claims to be made to Collector or other authorized officer.

<sup>4</sup>5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules as the Chief Reve-

<sup>1</sup> The words "and it shall come into force on the date of the passing thereof" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

<sup>2</sup> The words "but not so as to affect any suit in respect of a pension or grant of money or land-revenue which may have been instituted before such date" were repealed by the Amending Act, 1891 (12 of 1891).

<sup>3</sup> See reference to s. 4 in last paragraph of footnote on p. 347 *ante*.

<sup>4</sup> s. 5 has been amended in its application to U. P. by U. P. Act 12 of 1922.

## (II.—Rights to Pensions. III.—Mode of Payment.)

nue-authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

Civil Court empowered to take cognizance of such claims.

7. Nothing in sections 4 and 6 applies to—

Pensions for lands held under grants in perpetuity.

(1) any inám of the class referred to in section 1 of Madras Act No. IV of 1862;<sup>1</sup>

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North-Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property.

## III.—Mode of Payment.

<sup>2</sup>8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue-authority.

Payment to be made by Collector or other authorized officer.

9. Nothing in sections 4 and 8 shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Saving of rights of grantees of land-revenue.

10. The Local Government may, with the consent of the holder,

Commutation of pensions.

<sup>1</sup> i.e., "ináms of the classes described in cl. 1, s. 2, [Mad.] Regulation 4 of 1831, which have been, or shall be, enfranchised by the Inám Commissioner and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity." The classes so described are "hereditary or personal grants of money or of land-revenue, however denominated, conferred by the authority of the Governor in Council [or which, having been made by any Native Government, have been confirmed or continued by the British Government—Act 31 of 1836] in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamúndáris or páleiyams forfeited or held under attachment or management by the officers of Government, or as a yaumiá or charitable allowance, or as a pension."

<sup>2</sup> s. 8 has been amended in its application to U. P. by U. P. Act 12 of 1922.

(III.—*Mode of Payment.* IV.—*Miscellaneous.*)

order the whole or any part of his pension or grant of money or land revenue to be commuted for a lump sum on such terms as may seem fit.

IV.—*Miscellaneous.*

**Exemption  
of pension  
from at-  
tachment.**

<sup>1</sup>11. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

**Assignments,  
etc., in anti-  
cipation of  
pension, to  
be void.**

12. All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

**Reward to  
informers.**

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

**Power to  
make rules.**

<sup>2</sup>14. The Chief Controlling Revenue-authority may, with the consent of the Local Government, from time to time make rules consistent with this Act respecting all or any of the following matters:—

- (1) the place and times at which, and the person to whom, any pension shall be paid;
- (2) inquiries into the identity of claimants;
- (3) records to be kept on the subject of pensions;
- (4) transmission of such records;
- (5) correction of such records;
- (6) delivery of certificates to pensioners;
- (7) registers of such certificates;

<sup>1</sup> See too, s. 60, cl. (g) of the Code of Civil Procedure, 1908 (Act 5 of 1908). See also last paragraph of footnote under section 1, *supra*.

<sup>2</sup> s. 14 has been amended in its application to U. P. by U. P. Act 12 of 1922.

## (IV.—Miscellaneous.)

- (8) reference to the Civil Court, under section 6, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government;

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

## SCHEDULE.

(See section 2.)

Number and year.	Title or subject	Extent of repeal.
I.—BENGAL REGULATIONS.		
XXIV of 1793 .	A Regulation for re-enacting, with Modifications, the rules passed by the Governor General in Council on the 10th June 1791, for determining the Continuance or Discontinuance of the Pensions heretofore paid by the Proprietors and Farmers of Land, but included in the Jama or Revenue payable to Government at the Decennial Settlement, and also of the Pensions, heretofore paid from the Sâir, abolished.	The whole.
XXXIV of 1795 .	A Regulation for re-enacting, with Modifications, the rules respecting the Pensions payable from the Government and Mulki Treasuries in the Province of Benares.	The whole.
XXIV of 1803 .	A Regulation for trying the Validity of Titles of Persons receiving, or claiming a right to receive, Pensions, under the Denominations of Sâliânâh, Rozûnâh, or any other Description of Grant, in the Provinces ceded by the Nawâb Wazir to the Honourable the English East India Company.	The whole.
1 *	* * *	*
XXII of 1806 .	A Regulation for modifying the Rules hitherto observed in the admission and Payment of Claims to Pensions.	The whole.
II of 1811 .	A Regulation for amending the existing Rules for the support of Invalid Native Commissioned and Non-Commissioned Officers.	The whole.

<sup>1</sup> The entry relating to Bengal regulation I of 1804 was repealed by the Repealing Act, 1927 (XII of 1927).

SCHEDULE—*continued*.

Number and year.	Title or subject.	Extent of repeal.
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*(Schedule.)*I.—BENGAL REGULATIONS—*continued*.

XI of 1813	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions and for preventing the abuses committed in the receipt of Pensions.	The whole.
VI of 1817	A Regulation to explain the Purport and Intent of the Provision contained in Section II, Regulation XXIV, 1803.	The whole.

## II.—MADRAS REGULATIONS.

I of 1803	A Regulation for defining the Duties of the Board of Revenue, and for determining the Extent of the Powers vested in the Board of Revenue.	Section 43.
II of 1803	A Regulation for describing and determining the Conduct to be observed by Collectors in certain cases.	Section 30.
IV of 1831	A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Services rendered to the State, or in lieu of resumed Offices or Privileges, or of Zamindaris, or Pāleiyams forfeited or held under Attachment or Management by the Officers of Government, or as Yaumias or Pensions.	The whole.

## III.—BOMBAY REGULATION.

XXIX of 1827	A Regulation for bringing under the operation of the Regulations the Bombay Territories in the Dekkhan and Khandesh.	Section 6, clauses 2 and 3.
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## IV.—ACTS.

XXXI of 1836	Government Grants	The whole.
XXIII of 1838	Exemption of Grants from attachment	The whole.
VI of 1849	An Act for securing Military and Naval Pensions and Superannuation Allowances.	The whole.

THE INDIAN WEIGHTS AND MEASURES OF  
CAPACITY ACT, 1871.

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ACT No. XXXI OF 1871.<sup>1</sup>

[30th October, 1871.]

An Act to regulate the Weights and Measures of Capacity of  
British India.

WHEREAS it is expedient to provide for the ultimate adoption of a Preamble.

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1871, Pt. V, p. 398; for Proceedings in Council, see *ibid*, 1871, Supplement, pp. 1181, 1290, 1424, 1575.

uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows:—

*I.—Preliminary.*

Short title.  
Local extent.

1. This Act may be called the Indian Weights and Measures of Capacity Act, 1871, and extends to the whole of British India.

*II.—Standards.*

Standard of weight.

2. The primary standard of weight shall be called a ser, and shall be a weight of metal in the possession of the Government of India, equal, when weighed in a vacuum, to the weight known in France as the Kilo-gramme de Archives.

Units of weights and measures of capacity.

3. The units for weight and of measures of capacity shall be—  
for weights, the said ser;

for measures of capacity, a measure containing one such ser of water at its maximum density weighed in a vacuum.

Special weights and measures of capacity may be authorized.

4. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare the magnitude and denominations of the weights and measures of capacity, other than the said units, to be authorized under this Act:

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

The Governor General in Council may, in like manner, revoke such notification.

Unless it be otherwise ordered in any such notification, the subdivisions of all such weights and measures of capacity shall be expressed in decimal parts.

Districts how defined.

5. The Governor General in Council may, from time to time, by notification in the Gazette of India, define the limits of districts for the purposes of this Act.

Sub-districts how defined.

The Local Government may, from time to time, by notification in the official Gazette, define the limits of sub-districts for the purposes of this Act.

Primary standards to be provided.

6. The Governor General in Council may provide, for such districts as he thinks fit, proper primary standards and sets of the said authorized weights and measures of capacity.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

(II.—Standards. III.—Use of new Weights and Measures of Capacity.  
IV.—Wardens.)

7. The Local Government may provide, for such sub-districts as it thinks fit, copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub-districts. Local standards to be provided.

Such local standards shall be deemed correct, until they are proved to be otherwise.

## III.—Use of new Weights and Measures of Capacity.

8. Whenever the Governor General in Council considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or municipal body or railway company, the Governor General in Council may, by notification in the Gazette of India, direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall be used in dealings and contracts by such office, body or company; and may, in like manner, from time to time, alter or revoke such direction. Use of new weights and measures of capacity in Government offices, etc.

9. After the date fixed in any notification under section 8, all dealings and contracts had and made by the officers, bodies or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such officers, bodies or companies. Contracts by weight or measure of capacity.

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10. The Governor General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the Primary and local standard and sets of authorized weights and measures of capacity hereinbefore mentioned. Appointment of wardens.

The Governor General in Council, or the Local Government, respectively, may, at any time, suspend or remove any such Warden and appoint another.

11. The Governor General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:— Power to make rules.

- (a) the appointment of Wardens;
- (b) the guidance of Wardens in all matters connected with the performance of their duties;
- (c) the provision, replacement, custody and use of the standards;
- (d) the method of verifying local standards and weights, weighing machines and measures of capacity authorized under this Act, and balances, and of certifying such verification;



Provided that such verification shall not be required to be made oftener than once in two years;

- (e) the errors which may be tolerated in weights, weighing machines and measures of capacity authorized under this Act, and in balances;
- (f) the shapes, proportions and dimensions to be given to weights, weighing machines and measures of capacity authorized under this Act, and to balances, and the materials of which they may be made;
- (g) marking weights and measures of capacity authorized under this Act with their several denominations;
- (h) the conditions under which Government offices, municipal bodies and railway companies shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorized under this Act, and of the balances used by them;
- (z) the fees to be paid for verifying, correcting and certifying the verification of weights, weighing machines and measures of capacity authorized under this Act, and of balances.

Publication of rules.

Rules, when specially applied, to have force of law.

**12.** Such rules shall be published in the Gazette of India.

And the Governor General in Council may, by notification in the Gazette of India, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, municipal body or railway company: and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law.

Officers of Government and others to comply with rules.

Warden may refuse to verify or correct things unfit.

Exercise of any of Warden's powers.

Counterfeiting Warden's marks.

Tables of equivalents.

**13.** All officers of Government, municipal officers, and officers and servants of railway companies shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

**14.** The Warden may deface, or render incapable of use, or refuse to verify, correct or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction.

**15.** Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may, from time to time, appoint.

**16.** Whoever knowingly counterfeits any mark used by a Warden under section 11 shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

**17.** The Local Government may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents.

## THE INDIAN EVIDENCE ACT, 1872.

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CHAPTER X.

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163. Giving, as evidence, of document called for and produced on notice.
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CHAPTER XI.

## OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. No new trial for improper admission or rejection of evidence.

## (Chapter I.—Preliminary.)

## ACT No. I OF 1872.

[15th March, 1872.]

The Indian Evidence Act, 1872.<sup>1</sup>

WHEREAS it is expedient to consolidate, define and amend the law Preamble,  
of Evidence; It is hereby enacted as follows:—

## PART I.

## RELEVANCY OF FACTS.

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called the Indian Evidence Act, 1872.

Short title.

It extends to the whole of British India,<sup>2</sup> and applies to all judicial Extent.  
proceedings in or before any Court, including Courts-martial,<sup>3</sup>

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1868, p. 1574; for the draft or preliminary Report of the Select Committee, dated 31st March, 1871, see *ibid*, 1871, Pt. V, p. 273, and for the second Report of the Select Committee, dated 30th January, 1872, see *ibid*, 1872, Pt. V, p. 34; for discussions in Council, see *ibid*, 1868, Supplement, pp. 1060 and 1209, *ibid*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid*, 1872, pp. 136 and 230.

<sup>2</sup> This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898)—see the First Schedule, Bur. Code, Vol. I; in the Hill District of Arakan, by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, *ibid*; in British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B. and O. Code, Vol. I; in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, *ibid*; in the Chittagong Hill-tracts, by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), Bon. Code, Vol. I; in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill-tribes Regulation, 1895 (1 of 1895), s. 3, Bur. Code, Vol. I; and in the Chin Hills, as regards Hill-tribes, by the Chin Hills Regulation, 1896 (5 of 1896), s. 3, *ibid*; also [by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874)], in the following Scheduled Districts, namely, the Districts of Hazaribagh, Lohardaga (now the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1881, Pt. I, p. 504, [the Lohardaga or Ranchi District included at this time the Palamau District, separated in 1894]; and the Tarai of the Province of Agra, *ibid*, 1876, Pt. I, p. 505; Ganjam and Vizagapatam—see Gazette of India, 1899, Pt. I, p. 720; and in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926). The powers of a Local Government and those of a High Court were at the same time conferred on the Agent, Governor General, Central India, for the purposes of this Act.

<sup>3</sup> But see the Army Act (44 & 45 Vict., c. 58), s. 127, which is as follows:—

“A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law or ordinance of any Legislature whatsoever, other than the Parliament of the United Kingdom.”

Act I of 1872 is (subject to such modifications as the Governor General in Council may direct) applicable to all proceedings before Indian Marine Courts—see the Indian Marine Act, 14 of 1887, s. 68.

## (Chapter I.—Preliminary.)

<sup>1</sup>[other than Courts-martial convened under the Army Act] <sup>2</sup>[or the Air Force Act] but not to affidavits<sup>3</sup> presented to any Court or officer, nor to proceedings before an arbitrator;

Commence-  
ment of  
Act.

Repeal  
of enact-  
ments.

And it shall come into force on the first day of September, 1872.

2. On and from that day the following laws shall be repealed:—

- (1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;
- (2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861,<sup>4</sup> in so far as they relate to any matter herein provided for; and

<sup>24</sup> & <sup>25</sup>.  
Vict., c.67.

- (3) the enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Interpre-  
tation  
clause.

“Court.”

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

“Court ” includes all Judges<sup>5</sup> and Magistrates,<sup>6</sup> and all persons, except arbitrators, legally authorized to take evidence.

“Fact.”

“Fact ” means and includes—

- (1) any thing, state of things, or relation of things capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.

*Illustrations.*

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

<sup>1</sup> These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1919 (18 of 1919).

<sup>2</sup> These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

<sup>3</sup> As to practice relating to affidavits, see the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 30 (c) and Sch. I, Order XIX, see also the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>4</sup> Rep. Geo. 5, C. 61.

<sup>5</sup> Cf. the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 2, the Indian Penal Code (Act 45 of 1860), s. 19, and, for a definition of “District Judge,” the General Clauses Act, 1897 (10 of 1897), s. 3 (15).

<sup>6</sup> Cf. the General Clauses Act, 1897 (10 of 1897), s. 3 (21), and Code of Criminal Procedure, 1898 (Act 5 of 1898).

## (Chapter I.—Preliminary.)

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. “ Relevant.”

The expression “ facts in issue ” means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows. “ Facts in issue.”

*Explanation.*—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,<sup>1</sup> any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

*Illustrations.*

A is accused of the murder of B.

At his trial the following facts may be in issue:—

that A caused B's death;

that A intended to cause B's death;

that A had received grave and sudden provocation from B;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“ Document ”<sup>2</sup> means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. “ Docu- ment.”

*Illustrations.*

A writing<sup>3</sup> is a document:

\* Words printed, lithographed or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

“ Evidence ” means and includes—

“ Evidence.”

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry:

such statements are called oral evidence;

- (2) all documents produced for the inspection of the Court;
- such documents are called documentary evidence.

<sup>1</sup> See now the Code of Civil Procedure, 1908, Act 5 of 1908.

With reference to the settlement of issues, see the Code of Civil Procedure, 1908 (Act 5 of 1908), Sec. I, Order XIV.

<sup>2</sup> Cf. s. 29 of the Indian Penal Code (Act 45 of 1860), and s. 3 (16) of the General Clauses Act, 1897 (10 of 1897).

<sup>3</sup> Cf. definition of “ writing ” in s. 3 (58) of the General Clauses Act, 1897 (10 of 1897).

(Chapter I.—Preliminary. Chapter II.—Of the Relevancy of Facts.)

“Proved.” A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Disproved.” A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved.” A fact is said not to be proved when it is neither proved nor disproved.

“May presume.” 4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

“Shall presume.” Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

“Conclusive proof.” When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

## CHAPTER II.

### OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts. 5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

*Explanation.*—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.<sup>1</sup>

#### *Illustrations.*

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.<sup>1</sup>

<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

*(Chapter II.—Of the Relevancy of Facts.)*

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Relevancy of facts forming part of same transaction.

*Illustrations.*

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which are the occasion, cause or effect of facts in issue.

*Illustrations.*

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive, preparation and previous or subsequent conduct.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

*Explanation 1.*—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation 2.*—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

*(Chapter II.—Of the Relevancy of Facts.)**Illustrations.*

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is whether a certain document is the will of A.

The facts, that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

*(Chapter II.—Of the Relevancy of Facts.)**Illustrations.*

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

**10.** Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Things said or done by conspirator in reference to common design.

*Illustrations.*

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

**11.** Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

When facts not otherwise relevant become relevant.



## (Chapter II.—Of the Relevancy of Facts.)

*Illustrations.*

(a) The question is whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

**12.** In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

**13.** Where the question is as to the existence of any right or custom, the following facts are relevant:—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence:

(b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

*Illustration.*

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling.

**14.** Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

<sup>1</sup> *Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

<sup>2</sup> *Explanation 2.*—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.<sup>2</sup>

<sup>1</sup> These *explanations* were substituted for the original *explanation* to s. 14, by s. 1 (1) of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).

<sup>2</sup> See the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 311.

*(Chapter II.—Of the Relevancy of Facts.)**Illustrations.*

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

<sup>1</sup> (b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious. The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of A's health at the time an assurance on his life was effected.

<sup>1</sup> This illustration was substituted for the original illustration (b) to s. 14 by s. 1 (?) of the Indian Evidence Act (1872) Amendment Act (3 of 1891).

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Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional.

**15.** When there is a question whether an act was accidental or intentional, '[or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

*Illustrations.*

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

**16.** When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

*Illustrations.*

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

## ADMISSIONS.

Admission defined.

**17.** An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is

<sup>1</sup> These words in s. 15 were inserted by s. 2 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).

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made by any of the persons, and under the circumstances, hereinafter mentioned.

**18.** Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. Admission by party to proceeding or his agent ;

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character. by suitor in representative character ;

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or by party interested in subject-matter ;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

**19.** Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability. Admissions by persons whose position must be proved as against party to suit.

*Illustrations.*

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

**20.** Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions. Admissions by persons expressly referred to by party to suit.

*Illustration.*

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C; C knows all about it." C's statement is an admission.

**21.** Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32. Proof of admissions against persons making them, and by or on their behalf.

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(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

*Illustrations.*

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him, it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant.

**22.** Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

**23.** In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

*Explanation.*—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by

**24.** A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court

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to have been caused by any inducement, threat or promise<sup>1</sup> having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

inducement, threat or promise, when irrelevant in criminal proceeding.

25. No confession made to a police-officer<sup>2</sup> shall be proved as against a person accused of any offence.

Confession to police-officer not to be proved.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate,<sup>3</sup> shall be proved as against such person.

Confession by accused while in custody of police not to be proved against him.

<sup>4</sup> *Explanation.*—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal procedure, 1882.<sup>5</sup>

X of 1882.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

How much of information received from accused may be proved.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

<sup>1</sup> For prohibition of such inducements, etc., see s. 343 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>2</sup> In Upper Burma insert “who is a Magistrate,” see s. 4 (3) (c) of the Burma Laws Act, 1898 (13 of 1898), Bur. Code, Vol. I. As to statements made to a police-officer investigating a case, see the Code of Criminal Procedure, 1898 (Act 5 of 1898).

<sup>3</sup> A Coroner has been declared to be a Magistrate for the purposes of this section, see s. 20 of the Coroners Act, 1871 (4 of 1871), Bom. Code, Vol. I, Ben. Code, Vol. I.

<sup>4</sup> This explanation was added to s. 26 by s. 3 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).

<sup>5</sup> See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

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he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

**30.** When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

<sup>1</sup> *Explanation.*—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.<sup>2</sup>

*Illustrations.*

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not conclusive proof, but may estop.

**31.** Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

## STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

**32.** Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

When it relates to cause of death;

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or

<sup>1</sup> This *explanation* was inserted in s. 30 by s. 4 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).

<sup>2</sup> Cf. *Explanation* 4 to s. 108 of the Indian Penal Code (Act 45 of 1860).

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property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or against interest of maker ;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or gives opinion as to public right or custom, or matters of general interest ;

(5) When the statement relates to the existence of any relationship<sup>1</sup> [by blood, marriage or adoption] between persons as to whose relationship<sup>1</sup> [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or relates to existence of relationship ;

(6) When the statement relates to the existence of any relationship<sup>1</sup> [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs ;

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or in document relating to transaction mentioned in section 13, clause (a) ;

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

or is made by several persons and expresses feelings relevant to matter in question.

*Illustrations.*

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

<sup>1</sup> These words in s. 32, cls. (5) and (6), were inserted by s. 2 of the Indian Evidence Act Amendment Act (18 of 1872), .



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(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

**33.** Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

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*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

## STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

**34.** <sup>1</sup>Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Entries in books of account when relevant.

*Illustration.*

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

**35.** An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of entry in public record made in performance of duty.

**36.** Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statements in maps, charts and plans.

**37.** When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of <sup>2</sup>[any other legislative authority in British India constituted for the time being under the Indian Councils Act, 1861, the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909], or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

\* \* \*

**38.** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be

Relevancy of statements

<sup>1</sup> Cf. s. 240 of the Indian Companies Act, 1913 (7 of 1913), and Sch. I, Order VII, rule 17 of the Code of Civil Procedure, 1908 (Act 5 of 1908). As to admissibility in evidence of certified copies of entries in Bankers' books, see s. 4 of the Bankers' Books Evidence Act, 1891 (18 of 1891).

<sup>2</sup> These words and figures were substituted for the words "the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal" by the Repealing and Amending Act, 1914 (10 of 1914).

<sup>3</sup> The last paragraph of s. 37 was repealed by *ibid.*

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as to any law printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

## HOW MUCH OF A STATEMENT IS TO BE PROVED.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

**39.** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

## JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

Previous judgments relevant to bar a second suit or trial.

**40.** The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in probate, etc., jurisdiction.

**41.** A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment <sup>1</sup>[order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, <sup>1</sup>[order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, <sup>1</sup>[order or decree] declares that it had been or should be his property.

<sup>1</sup> These words in s. 41 wherever they occur were inserted by s. 3 of the Indian Evidence Act Amendment Act (18 of 1872).

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**42.** Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

*Illustration.*

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

**43.** Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

*Illustrations.*

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

<sup>1</sup> (e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

<sup>1</sup> (f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

**44.** Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

## OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

**45.** When the Court has to form an opinion upon a point of foreign

Opinions of experts

<sup>1</sup> These illustrations were added to s. 43 by s. 5 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).

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law, or of science, or art, or as to identity of handwriting <sup>1</sup>[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, <sup>2</sup>[or in questions as to identity of handwriting] <sup>1</sup>[or finger impressions] are relevant facts.

Such persons are called experts.

*Illustrations.*

(a) The question is, whether the death of A was caused by poison.

The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

**46.** Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

*Illustrations.*

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting when relevant.

**47.** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

*Explanation.*—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

<sup>1</sup> The words "or finger impressions," in both places where they occur in s. 45, were added by the Indian Evidence Act, 1899 (5 of 1899). For discussion in Council as to whether "finger impressions" include "thumb impressions," see Gazette of India, 1898, Pt. VI, p. 24.

<sup>2</sup> These words in s. 45 were inserted by s. 4 of the Indian Evidence Act Amendment Act (18 of 1872).

## (Chapter II.—Of the Relevancy of Facts.)

*Illustration.*

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Opinion as to existence of right or custom, when relevant.

*Explanation.*—The expression “general custom or right” includes customs or rights common to any considerable class of persons.

*Illustration.*

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family.

the constitution and government of any religious or charitable foundation or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion as to usages, tenets, etc., when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Opinion on relationship, when relevant.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the <sup>1</sup>Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.

IV of 1869  
XL of  
1860

*Illustrations.*

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. That fact that A was always treated as such by members of the family, is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of opinion when relevant.

<sup>1</sup> *Supra*.

(Chapter II.—Of the Relevancy of Facts. Chapter III.—Facts which need not be proved.)

*Illustration.*

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases character to prove conduct imputed irrelevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

<sup>1</sup>[54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

*Explanation 1.*—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

*Explanation 2.*—A previous conviction is relevant as evidence of bad character.]

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

*Explanation.*—In sections 52, 53, 54 and 55, the word “character” includes both reputation and disposition; but, <sup>2</sup>[except as provided in section 54,] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

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PART II.

ON PROOF.

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CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

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<sup>1</sup> This section was substituted for the original section 54 by s. 6 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).

<sup>2</sup> These words and figures in the *explanation* to section 55 were inserted by s. 7 of *ibid.*

*(Chapter III.—Facts which need not be proved.)*

57. The Court shall take judicial notice of the following facts:—

(1) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India:

Facts of which Court must take judicial notice.

(2) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3) Articles of War for Her Majesty's Army [Navy or Air Force]<sup>1</sup>.

24 & 25 Vict.  
c. 67.

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto.

*Explanation.*—The word "Parliament" in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;

(2) the Parliament of Great Britain;

(3) the Parliament of England;

(4) the Parliament of Scotland; and

(5) the Parliament of Ireland:

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6) all seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India or in the official Gazette of any Local Government:

(8) the existence, title and national flag of every State or Sovereign recognized by the British Crown:

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(10) the territories under the dominion of the British Crown:

<sup>1</sup> These words were substituted for the words "or Navy" by s. 2 and Sch. 1 of the Repealing and Amending Act, 1927 (10 of 1927).



(Chapter III.—Facts which need not be proved. Chapter IV.—Of Oral Evidence.)

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) the rule of the road <sup>1</sup>[on land or at sea] In all these cases<sup>2</sup> and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

## CHAPTER IV.

### OF ORAL EVIDENCE

Proof of facts by oral evidence. Oral evidence must be direct.

59. All facts, except the contents of documents, may be proved by oral evidence.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

<sup>1</sup> These words in section 57, para (13), were inserted by s 5 of the Indian Evidence Act Amendment Act (18 of 1872)

<sup>2</sup> For an additional case, see the Code of Civil Procedure, 1908 (Act 5 of 1908), s 84 (2)

(Chapter IV.—Of Oral Evidence. Chapter V.—Of Documentary Evidence.)

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

## CHAPTER V.

### OF DOCUMENTARY EVIDENCE.

**61.** The contents of documents may be proved either by primary or by secondary evidence. Proof of contents of documents.

**62.** Primary evidence means the document itself produced for the inspection of the Court. Primary evidence.

*Explanation 1*—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

*Explanation 2*—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

#### *Illustration*

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

**63.** Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained,<sup>1</sup>
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies,

Secondary evidence.

<sup>1</sup> See s 76, *infra*.

*(Chapter V—Of Documentary Evidence)*

- (3) copies made from or compared with the original,
- (4) counterparts of documents as against the parties who did not execute them,
- (5) oral accounts of the contents of a document given by some person who has himself seen it

*Illustrations*

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original

(c) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original

Proof of documents by primary evidence.

Cases in which secondary evidence relating to documents may be given.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

- (a) when the original is shown or appears to be in the possession or power—
  - of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or
  - of any person legally bound to produce it,
  - and when, after the notice mentioned in section 66, such person does not produce it,
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time,
- (d) when the original is of such a nature as not to be easily moveable;
- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence,<sup>1</sup>

<sup>1</sup> Cf. the Bankers' Books Evidence Act, 1891 (18 of 1891) s. 4

*(Chapter V.—Of Documentary Evidence.)*

- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents

**66.** Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, <sup>Rules as to notice to produce.</sup> <sup>1</sup>[or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it —

- (1) when the document to be proved is itself a notice;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court

**67.** If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting

<sup>Proof of signature and handwriting of person alleged to have signed or written document produced.</sup>

**68.** If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called

<sup>Proof of execution of document</sup>

<sup>1</sup> These words in section 66 were inserted by s. 6 of the Indian Evidence Act, Amendment Act (18 of 1872)

*(Chapter V.—Of Documentary Evidence.)*

required by  
law to be  
attested.

for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence

<sup>1</sup>[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.] XVI of 1908.

Proof  
where no  
attesting  
witness  
found.

**69.** If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of  
execution by  
party to  
attested  
document

**70.** The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when  
attesting  
witness  
denies the  
execution

**71.** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of  
document  
not required  
by law to be  
attested.

**72.** An attested document not required by law to be attested may be proved as if it was unattested

Comparison  
of signature,  
writing or  
seal with  
others  
admitted  
or proved

**73.** In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

<sup>2</sup>[This section applies also, with any necessary modifications, to finger-impressions ]

## PUBLIC DOCUMENTS

Public  
documents

**74.** The following documents are public documents:—

- (1) documents forming the acts or records of the acts—
  - (1) of the sovereign authority,

<sup>1</sup> This proviso was added by s 2 of the Indian Evidence (Amendment) Act, 1926 (31 of 1926).

<sup>2</sup> This paragraph was added to s 73 by the Indian Evidence Act, 1899 (5 of 1899).

*(Chapter V.—Of Documentary Evidence.)*

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country;

(2) public records kept in British India of private documents.

**75.** All other documents are private.

Private documents.  
Certified copies of public documents.

**76.** <sup>1</sup> Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

*Explanation*—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section

**77.** Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies

Proof of documents by production of certified copies.  
Proof of other official documents.

**78.** The following public documents may be proved as follows:—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government;

(2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government.

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer.

<sup>1</sup> A village-officer in the Punjab has been declared for the purposes of this Act to be a public officer having the custody of a public document—see the Punjab Land-revenue Act, 1887 (17 of 1887), s. 151 (2), P. and N. W. F. Code

*(Chapter V.—Of Documentary Evidence.)*

- (4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council
- (5) the proceedings of a municipal body in British India,—  
by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body.
- (6) public documents of any other class in a foreign country,—  
by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

## PRESUMPTIONS AS TO DOCUMENTS

Presumption  
as to  
genuineness  
of certified  
copies.

**79.** The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper

Presumption  
as to  
documents  
produced  
as record of  
evidence

**80.** Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine, that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken

*(Chapter V —Of Documentary Evidence)*

**81.** The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption  
as to  
Gazettes,  
news-  
papers,  
private  
Acts of  
Parliament  
and other  
documents.

**82.** When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

Presumption  
as to  
document  
admissible  
in England  
without proof  
of seal or  
signature.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland

**83.** The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate

Presumption  
as to maps  
or plans  
made by  
authority of  
Government.

**84.** The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

Presumption  
as to collec-  
tions of laws  
and reports  
of decisions.

and of every book purporting to contain reports of decisions of the Courts of such country.

**85.** The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Presumption  
as to power-  
of-attorney.

**86.** The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India <sup>1</sup>[in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption  
as to certified  
copies of  
foreign judi-  
cial records.

<sup>1</sup> These words in s 86 were substituted for the words "resident in" by s 8 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).



## (Chapter V —Of Documentary Evidence )

<sup>1</sup>[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place ] X of 1897.

Presumption  
as to books,  
maps and  
charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption  
as to  
telegraphic  
message .

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption  
as to due  
execution,  
etc., of docu-  
ments not  
produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption  
as to  
documents  
thirty years  
old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

*Explanation.*—Documents are said to be in proper custody, if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable

This explanation applies also to section 81.

*Illustrations*

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagee is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

<sup>1</sup> This paragraph was added to s 86 by s 4 of the Indian Evidence Act, 1899 (5 of 1899), in substitution for the paragraph added by s 8 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891)

## CHAPTER VI

## OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

**91.** When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence<sup>1</sup> shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

*Exception 1*—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

*Exception 2*—Wills<sup>2</sup> [admitted to probate in British India] may be proved by the probate.

*Explanation 1*—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one

*Explanation 2*—Where there are more originals than one, one original only need be proved.

*Explanation 3.*—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

*Illustrations*

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts in writing with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment

The evidence is admissible

<sup>1</sup> Where, however, a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed, evidence may be taken that the recorded statement was duly made—see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 533.

<sup>2</sup> These words in s. 91, *Exception 2*, were substituted for the words "under the Indian Succession Act" by s. 7 of the Indian Evidence Act Amendment Act (18 of 1872)

*(Chapter VI—Of the Exclusion of Oral by Documentary Evidence)*

Exclusion of  
evidence of  
oral agree-  
ment.

**92.** When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms

*Proviso (1)*—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, <sup>1</sup>[want or failure] of consideration, or mistake in fact or law.

*Proviso (2)*—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document

*Proviso (3)*—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

*Proviso (4)*—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

*Proviso (5)*.—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

*Proviso (6)*—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

*Illustrations*

(a) A policy of insurance is effected on goods “in ships from Calcutta to London” The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved

(b) A agrees absolutely in writing to pay B Rs 1,000 on the first March, 1873 The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

<sup>1</sup> These words were substituted for the words “want of failure” by s. 8 of the Indian Evidence Act, Amendment Act (18 of 1872)

## (Chapter VI—Of the Exclusion of Oral by Documentary Evidence)

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time or payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words, "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(h) A hires lodgings of B, and gives a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(u) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

**93.** When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Exclusion of evidence to explain or amend ambiguous document.

*Illustrations.*

(a) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

**94.** When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

*Illustration*

A sells to B, by deed, "my estate at Rampur containing 100 bighás." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

**95.** When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

*Illustration*

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

*(Chapter VI —Of the Exclusion of Oral by Documentary Evidence.)*

Evidence as to application of language which can apply to one only of several persons

**96.** When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to

*Illustrations*

(a) A agrees to sell to B, for Rs 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant

(b) A agrees to accompany B to Haidarābād. Evidence may be given of facts showing whether Haidarābād in the Dekkhan or Haidarābād in Sind was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies

**97.** When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply

*Illustration*

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell

Evidence as to meaning of illegible characters, etc.

**98.** Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense

*Illustration*

A, sculptor, agrees to sell to B, "all my mods." A has both models and modelling tools. Evidence may be given to show which he meant to sell

Who may give evidence of agreement varying terms of document.

**99.** Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document

*Illustration.*

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests

Saving of provisions of Indian Succession Act relating to wills.

**100.** Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)<sup>1</sup> as to the construction of wills

<sup>1</sup> See now the Indian Succession Act, 1925 (39 of 1925)

## (Chapter VII—Of the Burden of Proof.)

## PART III

## PRODUCTION AND EFFECT OF EVIDENCE

## CHAPTER VII

## OF THE BURDEN OF PROOF

**101.** Whoever desires any Court to give judgment as to any legal <sup>Burden of</sup> right or liability dependent on the existence of facts which he asserts, <sup>proof.</sup> must prove that those facts exist

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

*Illustrations*

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed

A must prove that B has committed the crime

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts

**102.** The burden of proof in a suit or proceeding lies on that person <sup>On whom</sup> who would fail if no evidence <sup>burden of</sup> at all were given on either side <sup>proof lies.</sup>

*Illustrations*

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father

If no evidence were given on either side, B would be entitled to retain his possession

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved

Therefore the burden of proof is on B.

**103.** The burden of proof as to any particular fact lies on that per- <sup>Burden of</sup> son who wishes the Court to believe in its existence, unless it is provided <sup>proof as to</sup> by any law that the proof of that fact shall lie on any particular person. <sup>particular</sup> <sup>fact.</sup>

*Illustration*

<sup>1</sup>(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it

**104.** The burden of proving any fact necessary to be proved in or- <sup>Burden of</sup> der to enable any person to give evidence of any other fact is on the per- <sup>proving fact</sup> son who wishes to give such evidence. <sup>to be proved</sup> <sup>to make</sup> <sup>evidence</sup> <sup>admissible.</sup>

<sup>1</sup> *Sic* in the Act as published in Gazette of India, 1872, Pt IV, p. 1. There is no illustration (b).

## (Chapter VII—Of the Burden of Proof)

*Illustrations*

- (a) A wishes to prove a dying declaration by B A must prove B's death  
 (b) A wishes to prove, by secondary evidence, the contents of a lost document.  
 A must prove that the document has been lost

**Burden of proving that case of accused comes within exceptions.**

**105.** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception **XLV of 1860** or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances

*Illustrations.*

- (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act  
 The burden of proof is on A.  
 (b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control  
 The burden of proof is on A.  
 (c) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments **XLV of 1860**  
 A is charged with voluntarily causing grievous hurt under section 325.  
 The burden of proving the circumstances bringing the case under section 335 lies on A.

**Burden of proving fact especially within knowledge.**

**106.** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

*Illustrations*

- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.  
 (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him

**Burden of proving death of person known to have been alive within thirty years.**

**107.** When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

**Burden of proving that person is alive who has not been heard of for seven years.**

**108.** <sup>1</sup>[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is <sup>1</sup>[shifted to] the person who affirms it.

**Burden of proof as to relationship**

**109.** When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have

<sup>1</sup> These words in s 108 were substituted for the original words "When" and "on" respectively, by s 9 of the Indian Evidence Act Amendment Act (18 of 1872), s 9.

*(Chapter VII —Of the Burden of Proof.)*

been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it

*in the cases of partners, landlord and tenant, principal and agent.*

**110.** When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

*Burden of proof as to ownership*

**111.** Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence

*Proof of good faith in transactions where one party is in relation of active confidence.*

*Illustrations*

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

**112.** The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

*Birth during marriage conclusive proof of legitimacy.*

**113.** A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler,<sup>1</sup> shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

*Proof of cession of territory.*

**114.** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

*Court may presume existence of certain facts.*

*Illustrations.*

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

<sup>1</sup>See, for example, Gazette of India 1873 Pt. I. n. 2



## (Chapter VII —Of the Burden of Proof Chapter VIII —Estoppel.)

- (e) that judicial and official acts have been regularly performed,
- (f) that the common course of business has been followed in particular cases.
- (g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it
- (h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him,
- (i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it —

as to *illustration (a)*—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business

as to *illustration (b)*—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself

as to *illustration (b)*—a crime is committed by several persons A, B and C, three of the criminals, are captured on the spot and kept apart from each other Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable

as to *illustration (c)*—A, the drawer of a bill of exchange, was a man of business, B, the acceptor, was a young and ignorant person, completely under A's influence

as to *illustration (d)*—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course

as to *illustration (e)*—a judicial act, the regularity of which is in question, was performed under exceptional circumstances

as to *illustration (f)*—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances

as to *illustration (g)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family

as to *illustration (h)*—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked

as to *illustration (i)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it

## CHAPTER VIII

## ESTOPPEL

**Estoppel.**

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing

*Illustration*

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title He must not be allowed to prove his want of title

**Estoppel of tenant; and of**

116. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted

## (Chapter VIII.—Estoppel. Chapter IX.—Of Witnesses )

to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

**117.** No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

*Explanation (1).*—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

*Explanation (2).*—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

## CHAPTER IX.

## OF WITNESSES

**118.** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

*Explanation* —A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them

**119.** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence

**120.** In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness

**121.** No judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any ques-

licensee of  
person in  
possession.

Estoppel of  
acceptor of  
bill of  
exchange,  
bailee or  
licensee.

Who may  
testify.

Dumb  
witnesses.

Parties to  
civil suit, and  
their wives or  
husbands.  
Husband or  
wife of  
person under  
criminal  
trial.

Judges and  
Magistrates.

## (Chapter IX—Of Witnesses.)

tions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting

*Illustrations*

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communi-  
cations  
during  
marriage.

**122.** No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married, nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence  
as to affairs  
of State

**123.** No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official  
communi-  
cations.

**124.** No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information  
as to  
commission  
of offences.

<sup>1</sup> [125. No Magistrate or Police-officer<sup>2</sup> shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.]

*Explanation*—“Revenue-officer” in this section means any officer employed in or about the business of any branch of the public revenue.]

Profes-  
sional com-  
munication.

**126.** No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his

<sup>1</sup> This section was substituted for the original s. 125 by the Indian Evidence Act (1872) Amendment Act, 1887 (3 of 1887).

<sup>2</sup> All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second-in-Command of military police in Burma, see the Burma Military Police Act (15 of 1887), s. 13, Bur. Code, Vol. I.

## (Chapter IX —Of Witnesses.)

professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure—

- (1) any such communication made in furtherance of any <sup>1</sup> [illegal] purpose
- (2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment

It is immaterial whether the attention of such barrister, <sup>2</sup>[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client

*Explanation*—The obligation stated in this section continues after the employment has ceased

*Illustrations*

(a) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

**127.** The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Section 126 to apply to interpreters, etc.

**128.** If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126, and, if any party to a suit or proceeding calls any such barrister, <sup>2</sup>[pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose

Privilege not waived by volunteering evidence.

**129.** No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal

Confidential communication.

<sup>1</sup> This word in s. 126 was substituted for the original word "criminal" by s. 10 of the Indian Evidence Act Amendment Act (18 of 1872)

<sup>2</sup> This word was inserted by *ibid.*

(Chapter IX.—Of Witnesses. Chapter X —Of the Examination of Witnesses )

Persons with  
legal  
advisers.

professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others

Production  
of title-deed  
of witness,  
not a party

**130.** No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims

Production  
of docu-  
ments which  
another  
person,  
having  
possession,  
could refuse  
to produce.

**131.** No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production

Witness not  
excused  
from answer-  
ing on  
ground that  
answer will  
criminate.

**132.** A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind.

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer

Accomplice.

**133.** An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of  
witnesses.

**134.** No particular number of witnesses shall in any case be required for the proof of any fact.

## CHAPTER X

### OF THE EXAMINATION OF WITNESSES.

Order of pro-  
duction and  
examination  
of witnesses.

**135.** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court

*(Chapter X —Of the Examination of Witnesses.)*

**136.** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

*Illustrations*

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property

The relevancy of the denial depends on the identity of the property The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

**137.** The examination of a witness by the party who calls him shall be called his examination-in-chief

Examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination

Cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination

Re-examination.

**138.** Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined

Order of examinations.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

*(Chapter X.—Of the Examination of Witnesses)*

**Direction of re-examination.**

The re-examination shall be directed to the explanation of matters referred to in cross-examination, and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter

**Cross-examination of person called to produce a document**

**139.** A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

**Witnesses to character.**

**140.** Witnesses to character may be cross-examined and re-examined.

**Leading questions.**

**141.** Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

**When they must not be asked.**

**142.** Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

**When they may be asked.**

**143.** Leading questions may be asked in cross-examination

**Evidence as to matters in writing.**

**144.** Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it

*Explanation*—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

*Illustration.*

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

**Cross-examination as to previous statements in writing.**

**145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must,

<sup>1</sup> As to the application of s 145 to police-diaries, see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 172.

*(Chapter X—Of the Examination of Witnesses.)*

before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

**146.** When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

Questions  
lawful in  
cross-ex-  
amination

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

**147.** If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto

When wit-  
ness to be  
compelled to  
answer.

**148.** If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations —

Court to  
decide when  
question  
shall be  
asked and  
when witness  
compelled to  
answer.

- (1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies
- (2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies
- (3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence
- (4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable

**149.** No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded

Question  
not to be  
asked  
without  
reasonable  
ground

*Illustrations*

(a) A barrister is instructed by an attorney or vakil that an important witness is a dākhil. This is a reasonable ground for asking the witness whether he is a dākhil



*(Chapter X —Of the Examination of Witnesses.)*

(b) A pleader is informed by a person in Court that an important witness is a *dákáit*. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a *dákáit*.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a *dákáit*. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a *dákáit*.

Procedure  
of Court in  
case of  
question  
being asked  
without  
reasonable  
grounds.  
Indecent and  
scandalous  
questions

**150.** If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, *vakil* or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, *vakil* or attorney is subject in the exercise of his profession.

**151.** The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions  
intended to  
insult or  
annoy.

**152.** The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion  
of evidence  
to contradict  
answers to  
questions  
testing  
veracity.

**153.** When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

*Exception 1.*—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

*Exception 2.*—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

*Illustrations*

(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question at Lahore.

*(Chapter X.—Of the Examination of Witnesses.)*

In each of these cases the witness might, if his denial was false, be charged with giving false evidence

(d) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality

**154.** The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party Question by party to his own witness.

**155.** The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him. — Impeaching credit of witness.

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2) by proof that the witness has been bribed, or has [accepted]<sup>1</sup> the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

*Explanation* — A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence

*Illustrations*

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence

The evidence is admissible

**156.** When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which Questions tending to corroborate evidence of relevant fact admissible.

<sup>1</sup> This word was substituted for the original word "had" by s 11 of the Indian Evidence Act Amendment Act (18 of 1872)

*(Chapter X—Of the Examination of Witnesses.)*

such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies

*Illustration*

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

**157.** In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 33 or 33.

**158.** Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

**159.** A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document.

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159

**160.** A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

## (Chapter X—Of the Examination of Witnesses)

*Illustration*

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered

**161.** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

**162.** A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

Production of documents

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code

Translation of documents.

**XIV of 1860.**

**163.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so

Giving, as evidence, of document called for and produced on notice.

**164.** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court

Using, as evidence, of document production of which was refused on notice.

*Illustration.*

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so

**165.** The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

Judge's power to put questions or order production.

<sup>1</sup> As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 172.

*(Chapter X.—Of the Examination of Witnesses. Chapter XI.—Of Improper Admission and Rejection of Evidence.)*

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of  
jury or  
assessors to  
put questions.

**166.** In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

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## CHAPTER XI.

### OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

No new trial  
for improper  
admission or  
rejection of  
evidence.

**167.** The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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(Schedule.)

## SCHEDULE.

## ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III, Cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of His present Majesty (intituled "An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies"), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38 so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vict., Cap. 99.	To amend the Law of Evidence . .	Section 11 and so much of section 19 as relates to British India.
1 * * *	* * *	* * *
2 * * *	* * *	* * *

<sup>1</sup> The entries relating to Acts XV of 1852, XIX of 1853, II of 1855, and XXV of 1861 were repealed by the Repealing Act, 1927 (XII of 1927).

<sup>2</sup> The entry relating to ss. 7 and 8 of the General Clauses Act, 1868 (1 of 1868), was repealed by the General Clauses Act, 1897 (10 of 1897).

## THE SPECIAL MARRIAGE ACT, 1872.

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## PREAMBLE.

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AND BRIDE.

THIRD SCHEDULE.—REGISTRAR'S CERTIFICATE.

FOURTH SCHEDULE.—[*Repealed*].

ACT No. III of 1872.<sup>1</sup>

[22nd March 1872.]

## An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for persons Preamble.  
 who do not profess the Christian, Jewish, Hindú, Muhammadan, Pársi, Buddhist, Sikh or Jaina religion, <sup>2</sup>[and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion] and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:—

1. This Act extends to the whole of British India.<sup>3</sup>

Local extent.

[Commencement.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindú or the Muhammadan, or the Pársi or the Buddhist, or the Sikh or the Jaina religion, <sup>4</sup>[or between persons each of whom professes one or other of the following religions, that is to say the Hindu, Buddhist, Sikh or Jaina religion] upon the following conditions:—

Conditions upon which marriages under Act may be celebrated.]

- (1) neither party must, at the time of the marriage, have a husband or wife living;
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

<sup>1</sup> Short title, The Special Marriage Act, 1872. See the Indian Short Titles Act, 1897 (14 of 1897).

There was no Statement of Objects and Reasons; the Bill as introduced was published in the Gazette of India, 1868, p. 1403; for the Report of the Select Committee, dated 21st December, 1871, see *ibid*, 1871, Pt. V, p. 519; for discussions in Council, see *ibid*, 1868, Supplement, pp. 800 and 1197; *ibid*, 1871, Extra Supplement, pp. 16 and 42; *ibid*, 1872, Supplement, pp. 2, 57, 193 and 261.

<sup>2</sup> Inserted by s. 2 of the Special Marriage (Amendment) Act, 1923 (30 of 1923).

<sup>3</sup> Act 3 of 1872 has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code, Vol. I; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; in Angul and the Khondmals by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. and O. Code, Vol. I.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

the Districts of Hazáribágh, Lohárdaga and Mámbhum, and Pargana Bhálbhum and the Kolhan in the District of Singbhum—see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894. The District of Lohárdaga is now called the Ranchi District;

the North-Western Provinces Taráí—*ibid*, 1876, Pt. I, p. 505.

<sup>4</sup> Inserted by s. 3 of the Special Marriage (Amendment) Act, 1923 (30 of 1923).



- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

*1st Proviso.*—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

*2nd Proviso.*—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

Appointment  
of Marriage  
Registrars.

**3.** The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

One of the  
parties to in-  
tended mar-  
riage to give  
notice to Re-  
gistrar.

**4.** When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

Notice to be  
filed and copy  
entered in the  
Marriage  
Notice Book.

**5.** The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Objection to  
marriage.

**6.** Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Procedure on receipt of objection.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

Objector may file suit.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

Certificate of filing of suit to be lodged with Registrar.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Court may fine when objection not reasonable.

10. Before the marriage is solemnized, the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Declaration by parties and witnesses.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, [A], take thee, [B], to be my lawful wife (or husband)."

Marriage how to be solemnized.

Place where  
marriage  
may be  
solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.<sup>1</sup>

Certificate of  
marriage.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

Transmission  
of certified  
copies of  
entries in  
marriage-  
certificate  
book to the  
Registrar  
General of  
Births,  
Deaths and  
Marriages.  
ees.

<sup>2</sup>[13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the <sup>3</sup>[Local Government] from time to time directs,<sup>4</sup> a true-copy certified by him, in such form as the <sup>3</sup>[Local Government] from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.<sup>5</sup>]

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.<sup>6</sup>

The Registrar may, if he think fit, demand payment of any such fee before the solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage-Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

Penalty on  
married per-  
son marrying  
again under  
Act.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void. XLV of 1860,

<sup>1</sup> For rules framed under this section, see the different Local Rules and Orders.

<sup>2</sup> S. 13A was inserted by s. 29 of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

<sup>3</sup> These words were substituted for the words "Governor General in Council" by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

<sup>4</sup> For orders issued under this section, see Gazette of India, 1889, Supplement, p. 921.

<sup>5</sup> As to duty of the Registrar General to make and keep indexes of the certified copies sent to his office under this section, see the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 7.

<sup>6</sup> For scales of fees to be paid to Registrars of Marriages prescribed by different Governments, see the Local Rules and Orders.

- 16.** Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage. Punishment of bigamy.
- 17.** The Indian Divorce Act<sup>1</sup> shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2 of this Act. Indian Divorce Act to apply.
- 18.** The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them. Law to apply to issue of marriages under Act.
- 19.** Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed. Saving of marriages solemnized otherwise than under Act.
- 20.** [*Registry of marriages contracted before passing of Act.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*
- 21.** Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code. Penalty for signing declarations or certificates containing false statements.
- 22.** The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family. Effect of certain marriages on coparcenary.
- 23.** A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850, applies: Rights of succession in certain cases of marriage under Act.
- XXI of 1850.** Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust.
- 24.** Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act, and to the Succession to the property of

<sup>1</sup> *Supra.*<sup>2</sup> Ss. 22 to 26 were added by s. 4 of the Special Marriage (Amendment) Act, 1923 (30 of 1923).

parties  
married  
under Act.

Person  
marrying  
under Act  
not to have  
right of adop-  
tion.

Adoption  
by father of  
person  
marrying  
under Act.

property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865.<sup>1</sup>

X of 1865.

25. No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption.

26. When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject.]

### FIRST SCHEDULE.

(See section 4.)

#### NOTICE OF MARRIAGE.

To , a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling-place	Length of residence.
A B	Unmarried. Widower.	Landowner.	Of full age.	" "	23 days.
C D	Spinster.	" "	Minor.	" "	" "

Witness my hand, this  
187 .

day of

(Signed) A. B.

<sup>1</sup> See now the Indian Succession Act, 1925 (39 of 1925).

## SECOND SCHEDULE.

(See section 10.)

## DECLARATION TO BE MADE BY THE BRIDEGROOM.

I, *A B*, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion: <sup>1</sup>[or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion.]

3. I have completed my age of eighteen years:

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*And when the bridegroom has not completed his age of twenty-one years:*

5. The consent of my father [*or guardian, as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [*the bridegroom*].

## DECLARATION TO BE MADE BY THE BRIDE.

I, *C D*, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion: <sup>1</sup>[or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion.]

3. I have completed my age of fourteen years:

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*and when the bride has not completed her age of twenty-one years, unless she is a widow:*

<sup>1</sup> These words were inserted by s. 5 of the Special Marriage (Amendment) Act, 1923 (30 of 1923).

5. The consent of *M N*, my father [*or guardian, as the case may be*] has been given to a marriage between myself and *A B* and has not been revoked: ]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D*:

*G H*,

*I J*, [*three witnesses*].

*K L*,

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:*

Signed in my presence and with my consent by the above-named *A B* and *C D*:

*M N*, the father [*or guardian*]  
of the above-named *A B* (*or C D*,  
*as the case may be*).]

(Countersigned) *E F*,  
*Registrar of Marriages under Act*  
*III of 1872 for the District of*

Dated the      day of      18      .

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### THIRD SCHEDULE.

(*See section 13.*)

#### REGISTRAR'S CERTIFICATE.

I, *E F*, certify that, on the                      of                      18  
appeared before me *A B* and *C D*, each of whom in my presence and in  
the presence of three credible witnesses, whose names are signed here-

under, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,  
*Registrar of Marriages under Act*  
*III of 1872 for the District of*  
 (Signed) *A B*,  
*C D*.

*G H*,  
*I J*,  
*K L*, } [three witnesses].

*Dated the      day of      18   .*

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#### FOURTH SCHEDULE.

[*Rep. by the Repealing Act, 1876 (XII of 1876).*]

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### THE INDIAN CONTRACT ACT, 1872.

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SCHEDULE. [REPEALED BY S. 3 & SCH. II OF THE REPEALING AND AMENDING ACT, 1914 (10 OF 1914)].

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ACT No. IX OF 1872.<sup>1</sup>

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[25th April, 1872.]

THE INDIAN CONTRACT ACT, 1872.

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WHEREAS it is expedient to define and amend certain parts of the Preamble. law relating to contracts; It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called the Indian Contract Act, 1872.

Short title.

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<sup>1</sup> For the Statement of Objects and Reasons for the Bill which was based on a report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6th, 1866, see *Gazette of India*, 1867, Extraordinary, p. 34; for the Report of the Select Committee, see *ibid.*, Extraordinary, dated 28th March, 1872; for discussions in Council, see *ibid.*, 1867, Supplement, p. 1064; *ibid.*, 1871, p. 313; and *ibid.*, 1872, p. 527.

The chapters and sections of the Transfer of Property Act, 1882 (4 of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of Act 9 of 1872—see Act 4 of 1882, s. 4.

Extent  
Commence-  
ment.  
Enactments  
repealed.

(Preliminary.)

It extends to the whole of British India<sup>1</sup>; and it shall come into force on the first day of September, 1872.

2\* \* \* \* nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpreta-  
tion-clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,<sup>3</sup> becomes a promise:
- (c) The person making the proposal is called the “promisor,” and the person accepting the proposal is called the “promisee”:
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement:
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

<sup>1</sup> Act 9 of 1872 has been declared in force in—

the Santhal Parganas—see the Santhal Parganas Settlement Regulation (3) of 1872, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B. and O. Code, Vol. I.

the Arakan Hill District—see the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, Bur. Code, Vol. I.

Upper Burma generally (except the Shan States)—see the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), Bur. Code, Vol. I.

British Baluchistan—see the British Baluchistan Laws Regulation, 1913 (2 of 1913) s. 3, Bal. Code.

the Pargana of Manpur—see the Manpur Laws Regulation, 1926 (2 of 1926), s. 2.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in—

the Tarai of the Province of Agra—see Gazette of India, 1876, Pt. I, p. 505;

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1881, Pt. I, p. 504. (The District of Lohardaga included at this time the present District of Palamau which was separated in 1894. The District of Lohardaga is now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44.)

<sup>2</sup> The words “The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof but” were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

<sup>3</sup> As to when communication of acceptance becomes complete, see s. 4, *ill. (b)*, *infra*.

(Preliminary. Chapter I.—Of the Communication, Acceptance and Revocation of Proposals.)

- (g) An agreement not enforceable by law is said to be void:
- (h) An agreement enforceable by law is a contract:
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

## CHAPTER I.

### OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

#### Illustrations.

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete,—

as against A, when the letter is posted;

as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

(Chapter I.—Of the Communication, Acceptance and Revocation of Proposals.)

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

*Illustrations.*

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

**Revocation ]** B may revoke his acceptance at any time before or at the moment when the  
**how made.** letter communicating it reaches A, but not afterwards.

6. A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party;
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

**Acceptance  
must be  
absolute.**

7. In order to convert a proposal into a promise, the acceptance must—

- (1) be absolute and unqualified;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

**Acceptance  
by perform-  
ing, condi-  
tions, or re-  
ceiving con-  
sideration.**

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

**Promises,  
express and  
implied.**

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

## CHAPTER II.

### OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

**10.** All agreements are contracts<sup>1</sup> if they are made by the free consent of parties competent to contract, for a lawful consideration<sup>2</sup> and with a lawful object, and are not hereby expressly declared to be void.

What agreements are contracts.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing<sup>3</sup> or in the presence of witnesses, or any law relating to the registration of documents.

**11.** Every person is competent to contract who is of the age of majority according to the law to which he is subject,<sup>4</sup> and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Who are competent to contract.

**12.** A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

What is a sound mind for the purposes of contracting.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

#### Illustrations.

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

**13.** Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Consent" defined.

<sup>1</sup> See s. 2, cl. (h), *supra*.

<sup>2</sup> See s. 25, *expln.* 2, and s. 102, *infra*.

<sup>3</sup> See e.g., s. 25, *infra*; the Indian Copyright Act, 1914 (3 of 1914), s. 5 of the First Schedule; the Apprentices Act, 1850 (19 of 1850), s. 8, the Conveyance of Land Act, 1854 (31 of 1854), ss. 14 and 18, the Carriers Act, 1865 (3 of 1865), ss. 6 and 7, the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), s. 24 Coll. Stat. Ind. Vol. II; the Imperial Bank of India Act, 1920 (47 of 1920), s. 21; the Indian Companies Act, 1913 (7 of 1913), ss. 5, 19, 35 and 88.

<sup>4</sup> See the Indian Majority Act, 1875 (9 of 1875). For an exception to this rule in the case of emigrants, see s. 9 of the Assam Labour and Emigration Act, 1901 (6 of 1901). Assam Code, Vol. I, Ben. Code, Vol. I, B. & O. Code, Vol. I, C. Provs. Code, Mad. Code, Vol. I and U. P. Code, Vol. I.



## (Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or XLV of 1860. threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

*Explanation.*—It is immaterial whether the Indian Penal Code is XLV of 1860. or is not in force in the place where the coercion is employed.

*Illustration.*

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code. XLV of 1860.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force XLV of 1860. at the time when or place where the act was done.

"Undue influence" defined.

<sup>1</sup>[16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other: or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue in-

<sup>1</sup> This section was substituted for the original s. 16 by s. 2 of the Indian Contract Act Amendment Act, 1899 (6 of 1899).

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

fluence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.<sup>1]</sup>

*Illustrations.*

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,<sup>2</sup> with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

*Explanation.*—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,<sup>3</sup> or unless his silence is, in itself, equivalent to speech.

*Illustrations.*

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

<sup>1</sup> *Supra.*

<sup>2</sup> Compare s. 238, *infra.*

<sup>3</sup> See s. 143, *infra.*

“Misrepresentation”  
defined.

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

18. “Misrepresentation” means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability  
of agree-  
ments with-  
out free con-  
sent.

19. When consent to an agreement is caused by coercion, \* \* \*  
\* \* \*<sup>1</sup>, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

*Exception.*—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

*Explanation.*—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

*Illustrations.*

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

<sup>1</sup> The words “undue influence” were repealed by s. 3 of the Indian Contract Act Amendment Act, 1899 (6 of 1899).

## (Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

<sup>1</sup>[19A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.]

*Illustrations.*

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Agreement void where both parties are under mistake as to matter of fact.

*Explanation.*—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

*Illustrations.*

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistakes as to law.

*Illustration.*

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

- x                      \*                      \*                      \*                      \*

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party as to matter of fact.

<sup>1</sup> S. 19A was inserted by s. 3 of the Indian Contract Act Amendment Act, 1899 (6 of 1899).

<sup>2</sup> The second Illustration to s. 21 was repealed by s. 3 and second Schedule of the Repealing and Amending Act, 1917 (24 of 1917).

What considerations and objects are lawful and what not.

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

**23.** The consideration or object of an agreement is lawful, unless— it is forbidden by law<sup>1</sup>; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

*Illustrations.*

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months; if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

*Void Agreements.*

**24.** If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void. XLV of 1869.

Agreements void, if considerations and objects unlawful in part.

<sup>1</sup> See ss. 26, 27, 28, 30, *infra*.

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

*Illustration.*

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

**25.** An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents],<sup>1</sup> and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

In any of these cases, such an agreement is a contract.

*Explanation 1.*—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

*Illustrations.*

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

<sup>1</sup> This word was substituted for the word "assurances" by the Amending Act 1891 (12 of 1891).

*(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)*

Agreement  
in restraint  
of marriage  
void.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement  
in restraint  
of trade  
void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Saving of  
agreement  
not to carry  
on business  
of which  
good-will is  
sold;

*Exception 1.*—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

of agreement  
between  
partners  
prior to  
dissolution.

*Exception 2.*—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

or during  
continuance  
of partner-  
ship.

*Exception 3.*—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Agreements  
in re traint  
of legal pro-  
ceedings  
void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of  
contract to  
refer to  
arbitration  
dispute that  
may arise.

*Exception 1.*—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Suits barred  
by such  
Contracts.

<sup>1</sup>*When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*

Saving of  
contract to  
refer  
questions  
that have

*Exception 2.*—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any

<sup>1</sup> The second clause of *exception 1* to section 28 is repealed by the Specific Relief Act, 1877 (1 of 1877), throughout British India. The clause is, however, printed here in italics, because the Contract Act is in force in certain Scheduled Districts to which the Specific Relief Act does not apply.

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.

Chapter III.—Of Contingent Contracts.)

provision of any law in force for the time being as to references to arbitration.<sup>1</sup>

already  
arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Agreements  
void for  
uncertainty.

#### Illustrations.

(a) A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d) A agrees to sell B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.

(e) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Agreements  
by way of  
wager void.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.<sup>2</sup>

Exception in  
favour of  
certain prizes  
for horse-  
racing.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

Section 294 A  
of the  
Indian Penal  
Code not  
affected.

### CHAPTER III.

#### OF CONTINGENT CONTRACTS.

31. A "contingent contract" is a contract to do or not to do some thing, if some event, collateral to such contract, does or does not happen.

"Contingent  
contract"  
defined.

#### Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

<sup>1</sup> Cf. the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 89 and Sch. II. The Indian Arbitration Act, 1899 (9 of 1899), and the Indian Companies Act, 1913 (7 of 1913), s. 152.

<sup>2</sup> Cf. the Gaming Act (8 and 9 Vict, c 109), s. 18.



*(Chapter III.—Of Contingent Contracts.)*

Enforcement  
of contracts  
contingent  
on an event  
happening.

**32.** Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

*Illustrations.*

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement  
of contracts  
contingent on  
an event not  
happening.

**33.** Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

*Illustration.*

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event  
on which  
contract is  
contingent to  
be deemed  
impossible, if  
it is the  
future con-  
duct of a  
living person.

**34.** If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

*Illustration.*

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When con-  
tracts become  
void which  
are contin-  
gent on  
happening of  
specified  
event within  
fixed time.  
When con-  
tracts may be  
enforced  
which are  
contingent  
on specified  
event not  
happening  
within fixed  
time.

**35.** Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

*Illustrations.*

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(Chapter III.—Of Contingent Contracts. Chapter IV.—Of the Performance of Contracts.)

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

**36.** Contingent agreements to do or not to do anything, if an <sup>Agreement</sup> impossible event happens, are void, whether the impossibility of the <sup>contingent</sup> event is known or not to the parties to the agreement at the time when <sup>on impossible</sup> it is made. <sup>events void.</sup>

*Illustrations.*

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

## CHAPTER IV.

### OF THE PERFORMANCE OF CONTRACTS.

#### *Contracts which must be performed.*

**37.** The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. <sup>Obligation of parties to contracts</sup>

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

*Illustrations.*

(a) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

**38.** Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. <sup>Effect of refusal to accept offer of performance.</sup>

Every such offer must fulfil the following conditions:—

(1) it must be unconditional:

(2) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing

*(Chapter IV.—Of the Performance of Contracts.)*

offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

*Illustration.*

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

**39.** When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

*Illustrations.*

(a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

*By whom Contracts must be performed.*

Person by whom promise is to be performed.

**40.** If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

*Illustrations.*

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

Effect of acceptance of performance from third person.

**41.** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint abilities.

**42.** When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons,

## (Chapter IV.—Of the Performance of Contracts.)

during their joint lives, and after the death, of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any <sup>1</sup>[one or more] of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

*Explanation.*—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

*Illustrations.*

(a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.<sup>2</sup>

Effect of release of one joint promisor.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or

<sup>1</sup> These words were substituted for the original word "one" by the Amending Act, 1891 (12 of 1891).

<sup>2</sup> See s 138, *infra*.

*(Chapter IV.—Of the Performance of Contracts.)*

survivors, and, after the death of the last survivor, with the representatives of all jointly.<sup>1</sup>

*Illustration.*

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

*Time and Place for Performance.*

Time for performance of promise where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

*Explanation.*—The question “what is a reasonable time” is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made.

47. When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

*Illustration.*

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

*Explanation.*—The question “what is a proper time and place” is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

*Illustration.*

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

<sup>1</sup> For an exception to s. 45 in case of Government securities, see the Indian Securities Act, 1920 (10 of 1920), s. 4.

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50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance in manner or at time prescribed or sanctioned by promisee.

*Illustrations.*

(a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

*Performance of Reciprocal Promises.*

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

*Illustrations.*

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

*Illustrations.*

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and

Liability of party preventing event on

## (Chapter IV.—Of the Performance of Contracts.)

which the contract is to take effect.

he is entitled to compensation <sup>1</sup>from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

*Illustration.*

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

*Illustrations.*

(a) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts per-

<sup>1</sup> See s. 73, *infra*.

## (Chapter IV.—Of the Performance of Contracts.)

formance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.<sup>1</sup>

at time other than that agreed upon.

56. An agreement to do an act impossible in itself is void.

Agreement to do impossible act.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.<sup>2</sup>

Contract to do act afterwards becoming impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Compensation for loss through non-performance of act known to be impossible or unlawful.

*Illustrations.*

- (a) A agrees with B to discover treasure by magic. The agreement is void.
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.
- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e) A contracts to act at a theatre for six months in consideration of a sum, paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Reciprocal promise to do things legal, and also other things illegal.

*Illustration.*

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

<sup>1</sup> Compare ss. 62 and 63, *infra*.

<sup>2</sup> See s. 65, *infra*. And see the Specific Relief Act, 1877 (1 of 1877), s. 13.



*(Chapter IV.—Of the Performance of Contracts.)**Illustration.*

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

*Appropriation of Payments.*

Application  
of payment  
where debt  
to be dis-  
charged is  
indicated.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

*Illustrations.*

(a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application  
of payment  
where debt  
to be dis-  
charged is  
not indicated.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application  
of payment  
where neither  
party ap-  
propriates.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

*Contracts which need not be performed.*

Effect of  
novation,  
rescission  
and altera-  
tion of con-  
tract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

*Illustrations.*

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

## (Chapter IV.—Of the Performance of Contracts.)

**63.** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,<sup>1</sup> or may accept instead of it any satisfaction which he thinks fit.

Promisor may dispense with or remit performance of promise.

*Illustrations.*

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.<sup>2</sup>

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [composition]<sup>3</sup> of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

**64.** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.<sup>4</sup>

Consequences of rescission of voidable contract.

**65.** When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Obligation of person who has received advantage under void agreement or contract that becomes void.

*Illustrations.*

(a) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

<sup>1</sup> But see s. 135, *infra*.

<sup>2</sup> See s. 41, *supra*.

<sup>3</sup> This word was substituted for the word "compensation" by s. 2 of the Amending Act, 12 of 1891.

<sup>4</sup> See s. 75, *infra*.

(Chapter IV.—Of the Performance of Contracts. Chapter V.—Of certain Relations resembling those created by Contract.)

Mode of communicating or revoking rescission of voidable contract.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

**66.** The rescission of a voidable contract may be communicated or re-voked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.<sup>1</sup>

**67.** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

*Illustration.*

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

## CHAPTER V.

### OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessities supplied to person incapable of contracting, or on his account.

**68.** If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

*Illustrations.*

(a) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another in payment of which he is interested.

**69.** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

*Illustration.*

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act.

**70.** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.<sup>3</sup>

<sup>1</sup> See ss. 3 and 5, *supra*

<sup>2</sup> Section 68 has been amended in the Central Provinces, by the Central Provinces Court of Wards (Amendment) Act, 1 of 1915, C. Provs. Code.

<sup>3</sup> As to suits by minors under s. 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act, 1882 (15 of 1882), s. 32.

(Chapter V.—Of certain Relations resembling those created by Contract.  
Chapter VI.—Of the Consequences of Breach of Contract.)

*Illustrations.*

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

**71.** A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.<sup>1</sup>

Responsibility of finds of goods.

**72.** A person to whom money has been paid, or anything delivered, by mistake or under coercion,<sup>2</sup> must repay or return it.

Liability of person to whom money is paid or, thing delivered by mistake or under coercion.

*Illustrations.*

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

## CHAPTER VI.

### OF THE CONSEQUENCES OF BREACH OF CONTRACT.

**73.** When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Compensation for failure to discharge obligation resembling those created by contract.

*Explanation.*—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

<sup>1</sup> See ss. 151 and 152, *infra*. As to definition of "bailee," see s. 148, *infra*.

<sup>2</sup> For definition of "coercion," see s. 15, *supra*.

*(Chapter VI.—Of the Consequences of Breach of Contract.)**Illustrations.*

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of

*(Chapter VI.—Of the Consequences of Breach of Contract.)*

machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74. <sup>1</sup>[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.]

<sup>1</sup>*Explanation.*—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

<sup>1</sup> These paragraphs were substituted for the first para. of s. 74, by s. 4 of the Indian Contract Act Amendment Act, 1899 (6 of 1899).

*(Chapter VI.—Of the Consequences of Breach of Contract.)*

*Exception.*—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

*Explanation.*—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

*Illustrations.*

(a) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000 as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

<sup>1</sup>[(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.]

<sup>1</sup>[(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.]

<sup>1</sup>[(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.]

<sup>1</sup>[(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.]

Party right-  
fully rescind-  
ing contract  
entitled to  
compensa-  
tion.

**75.** A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

*Illustration.*

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

<sup>1</sup> Ills. (d), (e), (f) and (g) were inserted by s. 4 (2) of the Indian Contract Act Amendment Act, 1899 (G of 1899).

## (Chapter VII.—Sale of Goods.)

## CHAPTER VII.

## SALE OF GOODS.

*When Property in Goods sold passes.*

**76.** In this chapter, the word “ goods ” means and includes every kind of moveable property. “ Goods ”  
defined.

**77.** “ Sale ” is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer. “ Sale ”  
defined.

**78.** Sale is effected by offer and acceptance of ascertained goods for a price, Sale how  
effected.

or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid or when the whole or part of the goods is delivered.

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

*Illustrations.*

(a) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b) A sends goods to B, with the request that he will buy them at a stated price if he approves of them or return them if he does not approve of them. B retains the goods and informs A that he approves of them. The goods become B's when B retains them.

(c) B offers A for his horse 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d) B offers A for his horse 1,000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e) B, on the first January, offers to A for a quantity of rice 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

**79.** Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished, the ownership of the thing is not transferred to the buyer, until it is ascertained, made or finished. Transfer of  
ownership of  
thing sold,  
which has  
yet to be  
ascertained,  
made or  
finished.

*Illustration.*

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.



## (Chapter VII.—Sale of Goods.)

Completion of sale of goods which the seller is to put into state in which buyer is to take them.

**80.** Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

*Illustration.*

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

**81.** Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

*Illustrations.*

(a) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver as weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts and to weigh each load at any the contract, to load the clay in his own carts and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's ground to B's place of deposit. Here nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale when goods are unascertained at date of contract.

**82.** Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.<sup>1</sup>

*Illustration.*

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

Ascertainment of goods by subsequent appropriation.

**83.** Where the goods are not ascertained at the time of making the agreement for sale but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

*Illustration.*

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

Ascertainment of goods by

**84.** Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract the seller is to do

<sup>1</sup> See s. 79, *supra*.

## (Chapter VII.—Sale of Goods.)

an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so the goods are ascertained.

*seller's  
selection.*

*Illustration.*

B agrees with A to purchase of him, at a stated price to be paid on a fixed day, 50 maunds of rice, out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

**85.** Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

*Transfer of  
ownership of  
moveable  
property,  
when sold  
together with  
immoveable.*

*Illustration.*

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

**86.** When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

*Buyer to  
bear loss  
after goods  
have become  
his property.*

*Illustrations.*

(a) B offers, and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

**87.** When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

*Transfer of  
ownership of  
goods agreed  
to be sold  
while non-  
existent.*

*Illustrations.*

(a) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crop then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

**88.** A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at

*Contract to  
sell and de-  
liver, at a*

## (Chapter VII.—Sale of Goods.)

future day  
goods not in  
seller's pos-  
session at  
date of  
contract.

the time of making the contract, and though at that time he has no reasonable expectation of acquiring them otherwise than by purchase.

*Illustration.*

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

Determina-  
tion of price  
not fixed by  
contract.

**89.** Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

*Illustration.*

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

*Delivery.*

Delivery how  
made.

**90.** Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

*Illustrations.*

(a) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b) B, in England, orders 100 hales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

Effect of de-  
livery to  
wharfinger or  
carrier.

**91.** A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

## (Chapter VII.—Sale of Goods.)

*Illustration.*

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

**92.** A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder. Effect of part delivery.

*Illustrations.*

(a) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of delivery of the whole.

(c) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

**93.** In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Seller not bound to deliver until buyer applies for delivery.

**94.** In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Place of delivery.

*Seller's Lien.*

**95.** Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid. Seller's lien.

**96.** Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before delivery of the goods, the seller may retain the goods for the price. Lien where payment to be made at a future day, but no time fixed for delivery.

*Explanation.*—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them. "Insolvency" defined.

## (Chapter VII.—Sale of Goods.)

*Illustration.*

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

**97.** Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day and does not then pay for them, the seller may retain the goods for the price.

*Illustration.*

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien against subsequent buyer.

**98.** A seller in possession of goods sold may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

*Stoppage in Transit.*

Power of seller to stop in transit.

**99.** A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

When goods are to be deemed in transit.

**100.** Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

*Illustrations.*

(a) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

## (Chapter VII.—Sale of Goods.)

**101.** The seller's right of stoppage, does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance  
of right of  
stoppage.

**102.** The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods,<sup>1</sup> assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Cessation of  
right on as-  
signment by  
buyer of  
bill of  
lading.

*Illustrations.*

(a) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

**103.** Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Stoppage  
where bill  
of lading is  
pledged to  
secure  
specific  
advance.

*Illustrations.*

(a) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

**104.** The seller may effect stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

Stoppage  
how effected.

**105.** Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Notice  
of seller's  
claim.

**106.** Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Right of  
seller on  
stoppage.

<sup>1</sup> See s. 108, exception 1, *infra*.

## (Chapter VII.—Sale of Goods.)

*Illustration.*

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

*Resale.*

**Resale on  
buyer's  
failure to  
perform.**

**107.** Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such resale.

*Title.*

**Title con-  
veyed by  
seller of  
goods to  
buyer.**

**108.** No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

*Exception 1.*—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

*Exception 2.*—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

*Exception 3.*—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In the case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

## (Chapter VII.—Sale of Goods.)

## Illustrations.

(a) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b) A, a merchant entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d) A, B and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f) A compels by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and before B rescinds the contract, sells the horse to C. The property is not transferred to C.

## Warranty.

**109.** If the buyer, or any person claiming under him, is by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Seller's responsibility for badness of title.

**110.** An implied warranty of goodness or quality may be established by the custom of any particular trade.

Establishment of implied warranty of goodness or quality.

**111.** On the sale of provisions, there is an implied warranty that they are sound.

Warranty of soundness implied on sale of provisions.

**112.** On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

Warranty of bulk implied on sale of goods by sample.

**113.** Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination although the buyer may have bought them by sample, or after inspection of the bulk.

Warranty implied where goods are sold as being of a certain denomination.

*Explanation.*—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

## Illustrations.

(a) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."



## (Chapter VII.—Sale of Goods.)

(b) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

Warranty where goods ordered for a specified purpose.

**114.** Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

*Illustration.*

B orders of A, a copper manufacturer, copper for sheathing a vessel. A on this order supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of articles of well-known ascertained kind.

**115.** Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

*Illustration.*

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

Seller when not responsible for latent defect.

**116.** In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

*Illustration.*

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

Buyer's right on breach of warranty.

**117.** Where a specific article sold with a warranty has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

*Illustration.*

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

Right of buyer on breach of warranty in respect of goods not ascertained.

**118.** Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that during such time he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

## (Chapter VII.—Sale of Goods.)

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but, if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

*Illustrations.*

(a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c) B makes two pairs of shoes for A by A's order. When the shoes are delivered they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

*Miscellaneous.*

**119.** When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

*Illustration.*

A orders of B specific articles of China. B sends these articles to A in a hamper with other articles of China which had not been ordered. A may refuse to accept any of the goods sent.

**120.** If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

**121.** When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed unless it was stipulated by the contract that he should be so entitled.

Right of seller as to rescission on failure of buyer to pay price at time fixed.

**122.** Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

**123.** If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Effect of use by seller of pretended bidding, to raise price.

## (Chapter VIII.—Of Indemnity and Guarantee.)

## CHAPTER VIII.

## OF INDEMNITY AND GUARANTEE.

"Contract of indemnity" defined.

**124.** A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

*Illustration.*

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity-holder when sued.

**125.** The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

"Contract of guarantee" "surety," "principal debtor" and "creditor".

**126.** A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety": the person in respect of whose default the guarantee is given is called the "principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

Consideration of guarantee.

**127.** Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

*Illustrations.*

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

## (Chapter VIII.—Of Indemnity and Guarantee.)

**128.** The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Surety's liability.

*Illustration.*

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

**129.** A guarantee which extends to a series of transactions is called a "continuing guarantee." "Continuing guarantee."

*Illustrations.*

(a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

**130.** A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. Revocation of continuing guarantee.

*Illustrations.*

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

**131.** The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. Revocation of continuing guarantee by surety's death.

**132.** Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence. Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

*Illustration.*

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

## (Chapter VIII.—Of Indemnity and Guarantee.)

Discharge of surety by variance in terms of contract.

**133.** Any variance, made without the surety's consent, in the terms of the contract between the principal <sup>1</sup>[debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

*Illustrations.*

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

**134.** The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

*Illustrations.*

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

**135.** A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debt discharges the surety, unless the surety assents to such contract.

<sup>1</sup> This word was inserted by s. 2 and 1st Schedule of the Repealing and Amending Act, 1917 (24 of 1917).

## (Chapter VIII.—Of Indemnity and Guarantee.)

**136.** Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Surety not discharged when agreement made with third person to give time to principal debtor.

*Illustration.*

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

**137.** Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

*Illustration.*

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

**138.** Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.<sup>1</sup>

Release of one co-surety does not discharge others.

**139.** If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

*Illustrations.*

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

**140.** Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

**141.** A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent

Surety's right to benefit of creditor's securities.

<sup>1</sup> See s. 44, *supra*.

## (Chapter VIII.—Of Indemnity and Guarantee.)

of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

*Illustrations.*

(a) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee  
obtained by  
misrepresentation  
invalid.

**142.** Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee  
obtained by  
concealment  
invalid.

**143.** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

*Illustrations.*

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on  
contract that  
creditor  
shall not act  
on it until  
co-surety  
joins.

Implied  
promise to  
indemnify  
surety.

**144.** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

**145.** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

*Illustrations.*

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(Chapter VIII.—Of Indemnity and Guarantee. Chapter IX.—Of Bailment.)

(c) A guarantees to C to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

**146.** Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.<sup>1</sup>

Co-sureties  
liable to  
contribute  
equally.

*Illustrations*

(a) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(b) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

**147.** Co-sureties, who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Liability of  
co-sureties  
bound in  
different  
sums.

*Illustrations.*

(a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c) A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

## CHAPTER IX

### OF BAILMENT.

**148.** A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

"Bailment,"  
"bailor," and  
"bailee,"  
defined.

<sup>1</sup> See s. 43, *supra*



## (Chapter IX —Of Bailment.)

*Explanation* —If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment

Delivery to  
bailee how  
made.

**149.** The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf

Bailor's duty  
to disclose  
faults in  
goods bailed.

**150.** The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks, and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

*Illustrations*

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be  
taken by  
bailee.

**151.** In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.<sup>1</sup>

Bailee when  
not liable for  
loss, etc.,  
of thing  
bailed.

**152.** The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Termination  
of bailment  
by bailee's  
act inconsistent  
with  
conditions.

**153.** A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

*Illustration*

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of  
bailee  
making

**154.** If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make com-

<sup>1</sup> The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act, 2 of 1905, in regard to animals or goods has been declared to be that of a bailee, under these sections, without the qualifying words "in the absence of any special contract" in s 152, see s 41 (1) of the Madras Port Trust Act, 1905 (Mad Act 2 of 1905), Mad Code, Vol II.

<sup>2</sup> As to railway contracts, see the Indian Railways Act, 1890 (9 of 1890), s 72. As to the liability of common carriers, see s 8 of the Carriers Act, 1865 (9 of 1865), *supra*.

## (Chapter IX.—Of Bailment.)

compensation to the bailor for any damage arising to the goods from or during such use of them.

unauthorised  
use of goods  
bailed.

*Illustrations*

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

**155.** If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of  
mixture, with  
bailor's con-  
sent, of his  
goods with  
bailee's.

**156.** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of  
mixture,  
without  
bailor's con-  
sent, when  
the goods  
can be  
separated.

*Illustration*

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

**157.** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of  
mixture  
without  
bailor's con-  
sent, when  
the goods  
cannot be  
separated.

*Illustration*

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

**158.** Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment  
by bailor of  
necessary ex-  
penses.

**159.** The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan,

Restoration  
of goods  
lent gra-  
tuitously.

## (Chapter IX —Of Bailment.)

the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

**160.** It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished

Bailee's responsibility when goods are not duly returned

**161.** If, by the default of the bailee, the goods are not returned delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.<sup>2</sup>

Termination of gratuitous bailment by death

**162.** A gratuitous bailment is terminated by the death either of the bailor or of the bailee

Bailor entitled to increase or profit from goods bailed.

**163.** In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed

*Illustration*

A leaves a cow in the custody of B to be taken care of The cow has a calf B is bound to deliver the calf as well as the cow to A

Bailors' responsibility to bailee.

**164.** The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

Bailment by several joint owners.

**165.** If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on redelivery to bailor without title.

**166.** If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery<sup>3</sup>

Right of third person claiming goods bailed.

**167.** If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor and to decide the title to the goods.

<sup>1</sup> S 161 has been declared to apply to the responsibility of the Trustees of the Port of Madras as to animals and goods in their possession see Madras Port Trust Act, 1905 (Mad Act 2 of 1905), Mad Code, Vol II

<sup>2</sup> As to railway contracts see the Indian Railways Act, 1890 (9 of 1890), s 72.

<sup>3</sup> See s 117 of the Indian Evidence Act, 1872 (1 of 1872), *supra*

## (Chapter IX —Of Bailment )

**168.** The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it

Right of  
finder of  
goods,  
may sue for  
specific  
reward  
offered.

**169.** When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder  
of thing com-  
monly on  
sale may  
sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value

**170.** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's  
particular  
lien

*Illustrations*

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid

**171.** Bankers, factors, wharfingers, attorneys of a High Court and General policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.<sup>1</sup>

General lien  
of bankers,  
factors,  
wharfingers,  
attorneys  
and policy-  
brokers.

*Bailments of Pledges*

**172.** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

"Pledge"  
"pawnor"  
and  
"pawnee"  
defined

**173.** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged

Pawnee's  
right of  
retention

<sup>1</sup> As to lien of an agent, see s 221, *infra*. As to lien of Railway Administration, see the Indian Railways Act, 1890 (9 of 1890), s 55

## (Chapter IX —Of Bailment.)

Pawnee not to retain for debt or promise other than that for which goods pledged  
Presumption in case of subsequent advances

**174.** The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred.

**175.** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

**176.** If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor

Defaulting pawnor's right to redeem.

**177.** If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them<sup>1</sup>, but he must, in that case, pay, in addition, any expenses which have arisen from his default

Pledge by possessor of goods, or of documentary title to goods.

**178.** A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents. Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud

Pledge where pawnor has only a limited interest

**179.** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest

<sup>1</sup> For limitation, see the Indian Limitation Act, 1908 (9 of 1908), Sch I, No 145

## (Chapter IX.—Of Bailment. Chapter X.—Agency.)

*Suits by Bailees or Bailors against Wrong-doers.*

**180.** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Suit by bailor or bailee against wrong-doer.

**181.** Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests

Apportionment of relief or compensation obtained by such suits

## CHAPTER X.

## AGENCY.

*Appointment and Authority of Agents.*

**182.** An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

"Agent" and "principal" defined

**183.** Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.<sup>1</sup>

Who may employ agent.

**184.** As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained

Who may be an agent

**185.** No consideration is necessary to create an agency.

Consideration not necessary.

**186.** The authority of an agent may be expressed or implied.<sup>2</sup>

Agent's authority may be expressed or implied

**187.** An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case

Definitions of express and implied authority.

<sup>1</sup> Cf s 11, *supra*

<sup>2</sup> See, however, s 33 of the Indian Registration Act, 1908, (16 of 1908). See also Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order III, rule 4.

*Illustration*

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of  
agent's  
authority

**188.** An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

*Illustrations*

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Agent's  
authority in  
an emer-  
gency

**189.** An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

*Illustrations*

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

*Sub-Agents*

When agent  
cannot  
delegate

**190.** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent"  
defined

**191.** A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representa-  
tion of  
principal  
by sub-  
agent pro-  
perly  
appointed

**192.** Where a sub-agent is properly appointed, the principal is so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's re-  
sponsibility  
for sub-agent

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's  
responsibil-  
ity.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

## (Chapter X.—Agency.)

**193.** Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

**194.** Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

*Illustrations*

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co for the recovery of the money. D is not a sub-agent, but is solicitor for A.

**195.** In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty on naming such person.

*Illustrations*

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

*Ratification*

**196.** Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority. Effect of ratification. Ratification may be expressed or implied.

**197.** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

*Illustrations.*

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account, B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.



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Knowledge  
requisite for  
valid rati-  
fication

**198.** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of  
ratifying un-  
authorized  
act forming  
part of a  
transaction

**199.** A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification  
of un-  
authorized  
act cannot  
injure third  
person

**200.** An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect

*Illustrations.*

(a) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

*Revocation of Authority.*

Termination  
of agency.

**201.** An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination  
of agency  
where agent  
has an  
interest in  
subject-  
matter

**202.** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

*Illustrations*

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When prin-  
cipal may  
revoke  
agent's  
authority.

**203.** The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation  
where  
authority has  
been partly  
exercised.

**204.** The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

## (Chapter X.—Agency.)

*Illustrations.*

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

**205.** Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation<sup>1</sup> to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal or renunciation by agent

**206.** Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

**207.** Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Revocation and renunciation may be expressed or implied.

*Illustration.*

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

**208.** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

*Illustrations*

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

**209.** When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity

**210.** The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination

Termination of sub-

<sup>1</sup> See s. 73, *supra*.

## (Chapter X—Agency.)

agent's  
authority

of an agent's authority) of the authority of all sub-agents appointed by him

*Agent's Duty to Principal*Agent's duty  
in conducting  
principal's  
business

**211.** An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

*Illustrations*

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and  
diligence re-  
quired from  
agent

**212.** An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

*Illustrations*

(a) A, a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as e g., by variation of rate of exchange—but not further.

(b) A, an agent for the sale of goods having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

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**213.** An agent is bound to render proper accounts to his principal Agent's accounts. on demand.

**214.** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking Agent's duty to communicate with principal. to obtain his instructions.<sup>1</sup>

**215.** If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him Right of principal when agent deals, on his own account, in business of agency without principal's consent. with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

*Illustrations.*

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

**216.** If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit Principal's right to benefit gained by agent dealing on his own account in business of agency which may have resulted to him from the transaction.

*Illustration.*

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

**217.** An agent may retain,<sup>2</sup> out of any sums received on account of the principal in the business of the agency, all moneys due to himself Agent's right of retainer out of sums received on principal's account. in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

**218.** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account. Agent's duty to pay sums received for principal.

**219.** In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; When agent's re-

<sup>1</sup> See s 189, *supra*

<sup>2</sup> See s 221, *infra*

## (Chapter X.—Agency.)

muneration  
becomes due

but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not  
entitled to  
remuneration  
for business  
miscon-  
ducted.

**220.** An agent who is guilty of misconduct in the business of the agency<sup>1</sup> is not entitled to any remuneration in respect of that part of the business which he has misconducted

*Illustrations*

(a) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien  
on principal's  
property.

**221.** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.<sup>2</sup>

*Principal's duty to Agent.*

Agent to  
be indemnified  
against con-  
sequences  
of lawful  
acts.

**222.** The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

*Illustrations.*

(a) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

Agent to be  
indemnified  
against con-  
sequences  
of acts done  
in good faith.

**223.** Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

<sup>1</sup> See, e.g., ss 195, 211, 212, 213, 214, *supra*.

<sup>2</sup> As to the general lien of the agent who is a banker, factor, attorney or policy broker, see s. 171, *supra*.

## (Chapter X.—Agency.)

*Illustrations.*

(a) A, a decree-holder and entitled to execution of B's goods requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

**224.** Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.<sup>1</sup>

Non-liability of employer of agent to do a criminal act

*Illustrations.*

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all cost and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

**225.** The principal must make compensation to his agent in respect of injury<sup>2</sup> caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

*Illustration*

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

*Effect of agency on contract with third persons.*

**226.** Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts

*Illustrations*

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot in a suit by the principal set off against that claim a debt due to himself from B.

(b) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

**227.** When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound when agent exceeds authority.

<sup>1</sup> See s. 24, *supra*.

<sup>2</sup> Cf. the Indian Fatal Accidents Act, 1855 (13 of 1855), *supra*.

## (Chapter X.—Agency.)

*Illustration*

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

**228.** Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

*Illustration*

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Consequences of notice given to agent

**229.** Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

*Illustrations*

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by contracts on behalf of principal.

**230.** In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal.
- (3) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed

**231.** If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can

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show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

**232.** Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract

Performance of contract with agent supposed to be principal

*Illustration*

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt

**233.** In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Right of person dealing with agent personally liable

*Illustration.*

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

**234.** When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable

**235.** A person untruly<sup>1</sup> representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing

Liability of pretended agent

**236.** A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

**237.** When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct

Liability of principal inducing belief that

<sup>1</sup> See s. 208, *supra*.



## (Chapter X.—Agency. Chapter XI.—Of Partnership.)

agent's unauthorized acts were authorized.

induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

*Illustrations*

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent

**238.** Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals<sup>1</sup>, but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

*Illustrations*

(a) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

## CHAPTER XI

## OF PARTNERSHIP

"Partnership" defined.

**239.** "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them.

"Firm" defined.

Persons who have entered into partnership with one another are called collectively a "firm".

*Illustrations*

(a) A and B buy 100 bales of cotton, which they agree to sell for their joint account, A and B are partners in respect of such cotton.

(b) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e) A and B are joint owners of a ship. This circumstance does not make them partners.

<sup>1</sup> See s. 250, *infra*.

## (Chapter XI.—Of Partnership.)

**240.** A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Lender not a partner by advancing money for share of profits

**241.** In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning of the last preceding section.

Property left in business by retiring partner, or deceased partner's representative

**242.** No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Servant or agent remunerated by share of profits not a partner.

**243.** No person, being a widow or child of a deceased partner of a trader and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Widow or child of deceased partner receiving annuity out of profits not a partner.

**244.** No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities <sup>1</sup>

Person receiving portion of profits for sale of good-will not a partner.

**245.** A person who has, by words spoken or written or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm.

Responsibility of person leading another to believe him a partner.

**246.** Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

Liability of person permitting himself to be represented as a partner.

**247.** A person who is under the age of majority according to the law to which he is subject<sup>2</sup> may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner not personally liable, but his share is.

<sup>1</sup> *Of the Partnership Act, 1865 (28 & 29 Vict., c. 86), s. 4.*

<sup>2</sup> *See the Indian Majority Act, 1875 (9 of 1875)*

## (Chapter XI.—Of Partnership.)

Liability  
of minor  
partner on  
attaining  
majority

**248.** A person who has been admitted to the benefits of partnership under the age of majority<sup>1</sup> becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership

Partner's  
liability for  
debts of  
partnership

**249.** Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's  
liability to  
third person  
for neglect  
or fraud of  
co-partner.

**250.** Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's  
power to  
bind  
co-partners.

**251.** Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member binds his co-partners to the same extent as if he were their agent duly appointed for that purpose

*Exception.*—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement

*Illustrations.*

(a) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Annulment  
of contract  
defining  
partner's  
rights and  
obligations.

**252.** Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all<sup>2</sup> of them, which consent must either be expressed, or be implied from a uniform course of dealing.

*Illustration*

A, B and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on

<sup>1</sup> See the Indian Majority Act, 1875 (9 of 1875)

<sup>2</sup> See s. 253, cl. (5), *infra*.

## (Chapter XI.—Of Partnership.)

the partnership business for many years, A receiving one-half of the nett profits and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits

**253.** In the absence of any contract to the contrary the relations of partners to each other are determined by the following rules:—

- (1) all partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss
- (2) all partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership:
- (3) each partner has a right to take part in the management of the partnership business:
- (4) each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business:
- (5) when differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners<sup>1</sup>:
- (6) no person can introduce a new partner into a firm without the consent of all the partners.
- (7) if from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.
- (8) unless the partnership has been entered into for a fixed term, any partner may retire from it at any time:
- (9) where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court:
- (10) partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

Rules determining partners' mutual relations, where no contract to contrary.

**254.** At the suit of a partner the Court may dissolve the partnership in the following cases:—

When Court may dissolve partnership.

- (1) when a partner becomes of unsound mind

<sup>1</sup> See s. 252, *supra*.

## (Chapter XI.—Of Partnership )

- (2) when a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors
- (3) when a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :
- (4) when any partner becomes incapable of performing his part of the partnership contract :
- (5) when a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :
- (6) when the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

**255.** A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

**256.** If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners

**257.** Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

**258.** A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

*Illustrations*

(a) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own solo benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

Obligations, to firm of partner

**259.** If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of

## (Chapter XI.—Of Partnership.)

the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

**260<sup>1</sup>** A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.<sup>1</sup>

**261.** The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

**262.** Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

**263.** After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

**264.** Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

**265.** Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the surplus according to the shares of the partners respectively.]

**266.** Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.<sup>2</sup>

<sup>1</sup> *Of the Mercantile Law Amendment Act, 1856 (19 & 20 Vict, c 97), s 4*

<sup>2</sup> This section was substituted for the original s 265 by the Indian Contract Act Amendment Act, 1886 (1 of 1886), s 1

<sup>3</sup> See for instance the Indian Companies Act, 1913 (7 of 1913), and the following special Acts (not republished in any Code) — 5 of 1838 (Bengal Bonded Warehouse), as amended by 5 of 1854, 5 of 1857 (Oriental Gas Company), as amended by 11 of 1867, Madras Act 6 of 1869 (Equitable Assurance Society)

**SCHEDULE.**

**[REPEALED BY S 3 AND SCH II OF THE REPEALING AND AMENDING ACT,  
1914 (10 OF 1914).]**

## THE INDIAN CHRISTIAN MARRIAGE ACT, 1872.

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 ACT No XV OF 1872 <sup>1</sup>


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[18th July 1872.]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating Preamble

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1871, Pt V, p 473, for Proceedings in Council, see *ibid*, 1870, Supplement, p 1077, *ibid*, 1871, Supplement, pp 1426, 1643, *ibid*, 1872, Supplement, pp 257, 728, 742, 805, 813 and 858 This Act is based on 14 and 15 Vict, c 40, and 58 Geo III, c 84 (both Statutes relate to marriages in India and are now no longer in force), and Acts 5 of 1852 and 5 of 1865, the last two Acts were repealed by this Act

## (Preliminary)

to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows.—

## PRELIMINARY.

**Short title.** 1. This Act may be called the Indian Christian Marriage Act, 1872.

**Extent.** It extends to the whole of British India,<sup>1</sup> and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

[Commencement] *Rep by the Repealing Act, 1874 (XVI of 1874).*

**Enactments repealed** 2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act

For clause xxiv of section 19 of the Court-fees Act, 1870,<sup>2</sup> the following shall be substituted:— VII of 1870.

“xxiv, Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.”

**Interpretation-clause.** 3. In this Act, unless there is something repugnant in the subject or context,—

“Church of England” and “Anglican” mean and apply to the Church of England as by law established;

“Church of Scotland” means the Church of Scotland as by law established,

“Church of Rome” and “Roman Catholic” mean and apply to the Church which regards the Pope of Rome as its spiritual head;

“Church” includes any chapel or other building generally used for public Christian worship,

<sup>1</sup> Act XV of 1872 has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s 4 (1), and Sch 1, Bur Code, Vol. I, in the Hill District of Arakan by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s 2, *ibid*, in British Baluchistan by the Baluchistan Laws Regulation, 1913 (2 of 1913), s 3, Bal Code, and in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B and O Code, Vol I, in the Chittagong Hill-tracts by notification under s. 4 (2) of the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), *see* Notin No 10851-E A, dated 7th October 1926, Calcutta Gazette, 1926, Pt I, p 1555, also by notification under s 3 of the Scheduled Districts Act, 1871 (14 of 1874), in the following Scheduled Districts, namely—the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum [*see* Gazette of India, 1881, Pt I, p 504], and the North-Western Provinces Tarai [*see ibid*, 1876, Pt I, p 505] It has also been extended by notification under s 5 of the same Act to the Sadiya Frontier Tract, *see* Assam Gazette, 1920, Pt II, p 1938

The District of Lohardaga, now called the Ranchi District (*see* Calcutta Gazette, 1899, Pt I, p 44), included at this time the Palaman District, which was separated in 1894

<sup>2</sup> *Supra*.

(Part I.—The Persons by whom Marriages may be solemnized.)

“ minor ” means a person who has not completed the age of twenty-one years and who is not a widower or a widow ;

“ Native State ” means the territories of any Native Prince or State in alliance with Her Majesty ;

the expression “ Christians ” means persons professing the Christian religion ;

and the expression “ Native Christians ” includes the Christian descendants of Natives of India converted to Christianity, as well as such converts :

<sup>1</sup>[“ Registrar General of Births, Deaths and Marriages ” means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886 ]

VI of 1886.

## PART I.

### THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Every marriage between persons, one or both of whom is <sup>2</sup>[or Marriages to be solemnized according to Act. are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section, and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Marriages may be solemnized in India—

- (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister ; Persons by whom marriages may be solemnized.
- (2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland ;
- (3) by any Minister of religion licensed under this Act to solemnize marriages ;
- (4) by, or in the presence of, a Marriage Registrar appointed under this Act,
- (5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

<sup>3</sup>[6. The Local Government,<sup>4</sup> so far as regards the territories under Grant and revocation of

<sup>1</sup> This paragraph was added by s 30, cl (a) of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886)

<sup>2</sup> These words were inserted by the Amending Act, 1891 (12 of 1891), Sch. II

<sup>3</sup> This section was substituted for the original s 6 by s 1 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891)

<sup>4</sup> For notifications in the North-Western Provinces and Oudh, under the powers conferred by ss 6, 7, 9, 62, 82, 83 and 85, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 42

*(Part I.—The Persons by whom Marriages may be solemnized.)*

licen e- to  
solemnize  
marriage

its administration, and the Governor General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses<sup>1</sup> to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may, by a like notification, revoke such licenses ]

Marriage  
Registrar .

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Ma-  
riage Regis-  
trar.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate  
when to be  
Marriage  
Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

Marriage  
Registrars  
in Native  
States

8. The Governor General in Council may, by notification in the Gazette of India, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty

The Governor General in Council may, by like notification, revoke any such appointment

Licensing of  
persons to  
grant certi-  
ficates of  
marriage  
between  
Native  
Christians.

9. The Local Government or (so far as regards any Native State) the Governor General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette

<sup>1</sup> As to validation of licenses granted under former Acts, see the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s 1 (2) and (3).

(Part II.—Time and Place at which Marriages may be solemnized.)

## PART II.

### TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

**10.** Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening. Time for solemnizing marriage.

Provided that nothing in this section shall apply to— Exceptions.

- (1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or
- (2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, <sup>1</sup>[or
- (3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland]

**11.** No Clergyman of the Church of England shall solemnize a marriage in any place other than a church <sup>2</sup>[where worship is generally held according to the forms of the Church of England], Place for solemnizing marriage.

unless there is no <sup>3</sup>[such] church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes Fee for special license.

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<sup>1</sup> This portion was added by s. 2 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891)

<sup>2</sup> These words were added by s. 3 of *ibid*

<sup>3</sup> This word was inserted by s. 3 of *ibid*



*(Part III.—Marriages solemnized by Ministers of Religion licensed under this Act.)*

### PART III

#### MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

Notice of intended marriage

**12.** Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

- (a) the name and surname, and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling-place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized.

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of such notice

**13.** If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church

Return or transfer of notice

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid

Notice of intended marriage in private dwelling

**14.** If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office

Sending copy of notice to Marriage Registrar when one party is a minor.

**15.** When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar

Procedure on receipt of notice

**16.** The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspi-

(Part III.—Marriages solemnized by Ministers of Religion licensed under this Act.)

euous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Issue of certificate of notice given and declaration made.

Provided—

Provided.

- (1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;
- (2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and
- (3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

Declaration before issue of certificate.

- (a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage,

and, when either or both of the parties is or are a minor or minors,

- (b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

Consent of father, or guardian, or mother.

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either

Power to prohibit by notice issue of certificate.

(Part III.—Marriages solemnized by Ministers of Religion licensed under this Act. Part IV.—Registration of Marriages solemnized by Ministers of Religion.

of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure on receipt of notice.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to Native Christians.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

Form of certificate.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

## PART IV.

### REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

Marriages when to be registered.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except

(Part IV.—Registration of Marriages solemnized by Ministers of Religion.)

marriages solemnized under Part V or Part VI of this Act, shall be registered<sup>1</sup> in manner hereinafter prescribed.

**28.** Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

Registration of marriages solemnized by clergymen of Church of England. Quarterly returns to Archdeaconry.

**29.** Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

Contents of returns.

The said Registrar upon receiving the said returns shall send one copy thereof to the <sup>2</sup>[Registrar General of Births, Deaths and Marriages].

**30.** Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

Registration and returns of marriages solemnized by Clergymen of Church of Rome.

and such person shall forward quarterly to the <sup>2</sup>[Registrar General of Births, Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding.

**31.** Every Clergyman of the Church of Scotland shall keep a register of marriages,

Registration and returns of marriages solemnized by Clergymen of Church of Scotland

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the <sup>2</sup>[Registrar General of Births, Deaths and Marriages], through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

<sup>1</sup> As to the establishment of general registry offices of births, deaths and marriages, see the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), Ch. II.

<sup>2</sup> These words were substituted for the words "Secretary to the Local Government," by s. 30 (b) of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

(Part IV.—Registration of Marriages solemnized by Ministers of Religion.)

Certain marriages to be registered in duplicate.

**32.** Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Entries of such marriages to be signed and attested.

**33.** The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificate of be forwarded to Marriage Registrar, copied and sent to Registrar General.

**34.** The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the <sup>1</sup>[Registrar General of Births, Deaths and Marriages].

Copies of certificates to be entered and numbered.

**35.** Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

Registrar to add number of entry to certificate, and send to Registrar General. Registration of marriages between Native Chris-

**36.** The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the <sup>1</sup>[Registrar General of Births, Deaths and Marriages].

**37.** When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36,

<sup>1</sup> See footnote under s. 30, *supra*.

(Part IV.—Registration of Marriages solemnized by Ministers of Religion. Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district<sup>1</sup> in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

tions under Part I or III Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the <sup>1</sup>[Registrar General of Births, Deaths and Marriages,] to be kept by him with the records of his office.

## PART V.

### MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt;

Notice of intended marriage before Marriage Registrar.

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

Publication of notice.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office,

Notice to be filed and copy entered in

<sup>1</sup> See footnote under s. 30, *supra*.

(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

Marriage  
Notice Book,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of  
notice given  
and oath  
made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired; and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before  
issue of  
certificate.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath<sup>1</sup>—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,—

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

Petition to  
High Court  
to order certifi-  
cate in less

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than

<sup>1</sup> As to meaning of "oath" see the General Clauses Act, 1897 (10 of 1897), s. 3, cl. (36) and s. 4

(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41. than fourteen days.

And, on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required. Order on petition

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor; Consent of father or guardian.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized. Protest against issue of certificate.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it. Effect of protest

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind, Petition where person whose consent is necessary is insane, or unjustly withheld consent.

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge:

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way: Procedure on petition.

and, if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.



(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition  
when  
Marriage  
Registrar  
refuses  
certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Procedure on  
petition.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

Petition  
when  
Marriage  
Registrar in  
Native State  
refuses  
certificate.

47. Whenever a Marriage Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor General in Council, who shall decide thereon.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

Petition  
when  
Registrar  
doubts  
authority  
of person  
forbidding.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge.

Procedure on  
petition.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case;

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

Whenever a Marriage Registrar appointed under section 8 to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor General in Council.

Reference when Marriage Registrar in Native State doubts authority of person forbidding.

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

Procedure on reference.

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

Liability for frivolous protest against issue of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

Form of certificate.

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

Solemnization of marriage after issue of certificate.

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:—

“I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*”

And each of the parties shall say to the other as follows or to the like effect:—“I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*].”

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage Registrar may ask for particulars to be registered. Registration of marriage solemnized under Part V.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the <sup>1</sup>[Registrar General of Births, Deaths and Marriages].

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the <sup>1</sup>[Registrar General of Births, Deaths and Marriages], to be kept by him with the records of his office.

Certificates to be sent monthly to Registrar General. Custody of register-book.

<sup>1</sup> These words were substituted for the words “Secretary to the Local Government,” by s. 30 (b) of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar. Part VI.—Marriage of Native Christians.)

56. The Marriage Registrars in Native States shall send the certificates mentioned in section 54 to such officers as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.<sup>1</sup>

Officers to whom Registrars in Native States shall send certificates.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

Registrars to ascertain that notice and certificate are understood by Native Christians.

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Native Christians to be made to understand declarations.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

Registration of marriages between Native Christians.

## PART VI.<sup>2</sup>

### MARRIAGE OF NATIVE CHRISTIANS.

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III,

On what conditions marriages of

<sup>1</sup> Cf. s. 24 (2) of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

The Commissioner of Ajmer-Merwara has been appointed under this section for the Rajputana States, *see* Aj. R. and O.; the Agent, Governor General, Central India Agency, for States in Central India, *see* Brit. Enact. N. S. (C. I.), the Registrar General of Births, Deaths and Marriages, Madras, for the Mysore State, *see* *ibid* (Mad. and My.), p. 47; the First Assistant to the Resident for the Hyderabad State, *see* *ibid* (Hyd), p. 26.

<sup>2</sup> As to validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian, and penalty for solemnizing such marriages under Part VI in future, *see* the Marriages Validation Act, 1892 (2 of 1892).

## (Part VI.—Marriage of Native Christians.)

Native Christians may be certified

be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

- (1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years;
- (2) neither of the persons intending to be married shall have a wife or husband still living;
- (3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

“ I call upon these persons here present to witness that I, A. B., in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C. D., to be my lawful wedded wife [*or husband*] ” or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

**61.** When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Keeping of register-book and deposit of extracts therefrom with Registrar General.

**62.** [(1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe,<sup>2</sup> a register-book of all marriages solemnized under this Part

<sup>1</sup> This section was substituted for the original s. 62 (relating to the keeping and form of the register-book) by s. 4 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891).

<sup>2</sup> For notifications issued by different Govts. see the different Local Rules and Orders.

## (Part VI.—Marriage of Native Christians. Part VII.—Penalties.)

in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor General in Council, references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2), of the Births, Deaths and Marriages Registration Act, 1886.]

VI of 1886.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Searches in register-book and copies of entries.

64. The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

Books in which marriages of Native Christians under Part I or Part III are registered.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864,<sup>1</sup> previous to the twenty-third day of February, 1865.

Part VI not to apply to Roman Catholics. Saving of certain marriages.

## PART VII.

## PENALTIES.

<sup>2</sup>[66. Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

False oath, declaration, notice or certificate for procuring marriage

(a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites

<sup>1</sup> Act 25 of 1864 was repealed by Act 5 of 1865, which was repealed by this Act.

<sup>2</sup> This section was substituted for the original s. 66 by s. 5 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891).

and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either XLV of 1860. description for a term which may extend to three years and, at the discretion of the Court, with fine.]

Forbidding,  
by false per-  
sonation,  
issue of cer-  
tificate by  
Marriage  
Registrar.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.

XLV of 1860.

Solemnizing  
marriage  
without due  
authority.

<sup>1</sup>[68. Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts* \* \* \*)<sup>2</sup>,

and shall also be liable to fine.]

Solemnizing  
marriage out  
of proper  
time, or  
without wit-  
nesses.

69. Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

<sup>1</sup>This section was substituted for the original s. 68 by s. 6 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891).

<sup>2</sup>The words "and to amend the law relating to the removal of such convicts" were repealed by the Amending Act, 1891 (12 of 1891).

## (Part VII.—Penalties.)

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Saving of marriages solemnized under special license.

<sup>1</sup>[Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.]

**70.** Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Solemnizing without notice or within fourteen days after notice, marriage with minor.

**71.** A Marriage Registrar under this Act, who commits any of the following offences:—

Issuing certificate, or marrying without publication of notice;

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

<sup>2</sup>(2) [after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage;]

marrying after expiry of notice;

(3) solemnizes, without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

issuing certificate against authorized prohibition.

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

<sup>1</sup> This paragraph was added by s. 7 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891).

<sup>2</sup> This clause was substituted for the original cl. (2) by s. 8 (1) of *ibid.*



Issuing certificate after expiry of notice, or, in case of minor within fourteen days after notice, or against authorized prohibition.

**72.** Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of '[two months] after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

XLV of 1860.

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome).

**73.** Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

Issuing certificate or marrying, without publishing notice, or after expiry of certificate ; issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice ;

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him :

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district :

issuing certificate authorized by forbidden;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue :

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<sup>1</sup> These words were substituted for the words " three months " by s. 8 (2) of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891).

## (Part VII.—Penalties. Part VIII.—Miscellaneous.)

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same, solemnizing marriage authorized by forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

**74.** Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine. Unlicensed person granting certificate pretending to be licensed.

<sup>1</sup>[Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.]

**75.** Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom, Destroying or falsifying register-books.

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**76.** The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed. Limitation of prosecutions under Act.

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## PART VIII.

### MISCELLANEOUS.

**77.** Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:— What matters need not be proved in respect of marriage in accordance with Act.

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

(2) the notice of the marriage:

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<sup>1</sup> This paragraph was added by s. 9 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891).

- (3) the certificate or translation thereof:
- (4) the time and place at which the marriage has been solemnized:
- (5) the registration of the marriage.

Correction of errors.

**78.** Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the <sup>1</sup>[Registrar General of Births, Deaths and Marriages], such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

**79.** Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or <sup>1</sup>[Registrar General of Births, Deaths and Marriages] having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, etc., to be evidence.

**80.** Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

Certificates of certain marriages for

**81.** The Registrar General of Births, Deaths and Marriages and the officers appointed under section 56 shall, at the end of every quarter

<sup>1</sup> These words were substituted for the words "Secretary to the Local Government" and "Secretary to a Local Government" respectively by s. 30 (b) of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).

<sup>2</sup> This section was substituted by s. 2 of the Indian Christian Marriage (Amendment) Act, 1911 (13 of 1911).

## (Part VIII.—Miscellaneous.)

in each year, select, from the certificates of marriages forwarded to them, respectively, during such quarter, the certificates of the marriages of which the Governor General in Council may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by them respectively, to the Secretary of State for India.]

Secretary of State.

**82.** Fees shall be chargeable under this Act for—

Local Government to prescribe fees.

receiving and publishing notices of marriages;

issuing <sup>1</sup>[certificates for marriage] by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of <sup>2</sup>[certificates for marriage] by the said Registrars;

searching register-books or certificates, or duplicates of copies thereof;

giving copies of entries in the same under sections 63 and 79.

The Local Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

**83.** The Local Government may make rules<sup>3</sup> in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

Power to make rules.

**84.** The powers conferred on the Local Government by sections 82 and 83 may, so far as regards Native States, be exercised by the Governor General in Council.

Power to prescribe fees and rules for Native States.

**85.** The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.

Power to declare who shall be District Judge.

<sup>4</sup>[**86.** (1) The powers and functions exercisable by the Governor General in Council under sections 6, 8, 9, 47, 48, 56 and 84 shall so far as regards any Native State which is within the political charge of

Powers and functions exercisable as regards

<sup>1</sup> These words were substituted for the words "certificate of marriages" by s. 3 and Sch. II of the Repealing and Amending Act, 1903 (1 of 1903).

<sup>2</sup> These words were substituted for the words "marriage certificates" by s. 3 and Sch. II of *ibid.*

<sup>3</sup> For rules made under s. 83 by different Governments, *see* the different Local Rules and Orders.

<sup>4</sup> This section was substituted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

*(Part VIII.—Miscellaneous.)*

Native  
States.

a Local Government, be exercised by that Local Government. The exercise under this section by any Local Government of powers and functions under sections 6, 8, 9 and 56 shall be by notification in the local official Gazette.

(2) The powers and functions exercisable under this Act by the Governor General in Council may be delegated to and exercised by such officers as he may from time to time appoint in this behalf.]

Saving of  
Consular  
marriages.

**87.** Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State.

Non-validation  
of marriages within  
prohibited  
degrees.

**88.** Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

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## (Schedule I.—Notice of Marriage.)

## SCHEDULE I.

(See sections 12 and 38.)

## NOTICE OF MARRIAGE.

To a Minister [*or Registrar*] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

Witness my hand, this

day of

*seventy-two.*(signed) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

(Schedule II.—Certificate of Receipt of Notice.)

## SCHEDULE II.

(See sections 24 and 50.)

## CERTIFICATE OF RECEIPT OF NOTICE.

I,

do hereby certify that, on the \_\_\_\_\_ day of \_\_\_\_\_, notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of \_\_\_\_\_ one of the parties (that is to say):—

Names.	Condi- tion.	Rank or profes- sion.	Age.	Dwell- ing place.	Length of resi- dence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings Street</i>	<i>More than a month.</i>		

and that the declaration, <sup>1</sup>[or oath] required by section 17 or 41 of the Indian Christian Marriage Act, 1872, has been duly made by the *XV of 1872*. said (*James Smith*).

Date of notice entered }  
Date of certificate given } The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ *seventy-two.*

(Signed)

This certificate will be void, unless the marriage is solemnized on or before the \_\_\_\_\_ day of \_\_\_\_\_

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

<sup>1</sup> These words were added by s. 3 of the Repealing and Amending Act, 1903 (1 of 1903), s. 3.

## (Schedule III.—Form of Register of Marriages.)

## SCHEDULE III.

(See sections 28 and 31.<sup>1</sup>)

## FORM OF REGISTER OF MARRIAGES.

## Quarterly Returns

of

## MARRIAGES

for

The Archdeaconry of  $\left. \begin{array}{l} \text{Calcutta.} \\ \text{Madras.} \\ \text{Bombay.} \end{array} \right\}$

I, \_\_\_\_\_, Registrar of the Archdeaconry of  $\left\{ \begin{array}{l} \text{Calcutta,} \\ \text{Madras,} \\ \text{Bombay,} \end{array} \right\}$

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry

of  $\left\{ \begin{array}{l} \text{Calcutta,} \\ \text{Madras,} \\ \text{Bombay,} \end{array} \right\}$  as made and transmitted to me for the quarter commencing the \_\_\_\_\_ day of \_\_\_\_\_ ending the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord

[Signature of Registrar.]

Registrar of the Archdeaconry of  $\left\{ \begin{array}{l} \text{Calcutta,} \\ \text{Madras,} \\ \text{Bombay,} \end{array} \right\}$

MARRIAGES solemnized at  $\left\{ \begin{array}{l} \text{Allahabad,} \\ \text{Barrackpore,} \\ \text{Bureilly,} \\ \text{Calcutta, etc., etc.} \end{array} \right\}$

WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnizing the marriage.
Year.	Month.	Day.	Christian.	Surname.									

<sup>1</sup> This reference was substituted for the original reference by the Second Schedule of the Amending Act, 1891 (12 of 1891).





(Schedule IV.—Marriage Register Book.)

CERTIFICATE OF MARRIAGE.

Number	WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
				Christian name.	Surname.					
	Day.	Month.	Year.							
				James	White	26 years	Widower	Carpenter	Agra	William White.
				Martha	Duncan	17 years	Spinster	..	Agra	John Duncan.

Married in the presence of us { James White, John Smith. }  
This marriage was solemnized between us { Martha Duncan, John Green. }

*Christian Marriage.*      [1872: Act XV.  
(Schedule V.—Enactments repealed.)

SCHEDULE V.

(See section 2.)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent* of Repeal.
Statute 58 Geo. 3, cap. 84.	An Act to remove Doubts as to the Validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 & 15 Vict., cap. 40.	An Act for Marriages in India . . .	The whole.
Act No. V of 1852 .	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V of 1865 .	The Indian Marriage Act, 1865 . . .	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII of 1866 .	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts, and the Cantonments of Secunderabad, Trimulgerry and Aurungabad.	The whole.

ACT No. XVIII OF 1872.<sup>1</sup>

[29th August 1872.]

## An Act to amend the Indian Evidence Act, 1872.

I of 1872.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872;<sup>2</sup> Preamble.  
It is hereby enacted as follows:—

1. This Act may be called the Indian Evidence Act Amendment Act. Short title,  
[Commencement.] Rep. by the Repealing Act, 1874 (XVI of 1874).

I of 1872.

2. In section 32 of the Indian Evidence Act, 1872,<sup>2</sup> clauses (5) and (6), after the word “relationship,” the words “by blood, marriage or adoption” shall be inserted. Amendment of Act I of 1872, section 32 clauses (5) and (6).

3. In section 41 of the same Act, lines 17, 20 and 23, after the word “judgment,” the words “order or decree” shall be inserted. Amendment of section 41.

4. In section 45 of the same Act, line 5, after the word “art,” the words “or in questions as to identity of handwriting” shall be inserted. Amendment of section 45.

5. In section 57 of the same Act, paragraph (13), after the word “road,” the words “on land or at sea” shall be inserted. Amendment of section 57.

6. In section 66 of the same Act, line 5, after the word “is,” the words “or to his attorney or pleader” shall be inserted. Amendment of section 66.

7. In section 91 of the same Act, *exception 2*, for the words “under the Indian Succession Act,” the words “admitted to probate in British India,” shall be substituted. Amendment of section 91.

8. [Amendment of section 92.] Rep. by the Repealing Act, 1876 (XII of 1876).

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1872, Pt. V, p. 631; for Proceedings in Council, see *ibid*, 1872, Supplement, pp. 922, 923 and 950.  
This Act has been declared in force in—

Upper Burma generally (except the Shan States), as amending Act I of 1872, see s. 4 (1) and the First Schedule, Burma Laws Act, 1898 (13 of 1898), Bur. Code; Vol. I.

in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code; Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh,  
Lohárdága and Mámbhum,  
and Pargana Dhálbhum and  
the Kolhán in the District of  
Singbhum. (The District of  
Lohárdága, now called the  
Ranchi District, see Calcutta  
Gazette, 1899, Pt. I, p. 44,  
then included the Palamau  
District, separated in 1894).  
The North-Western Provinces  
Taráí . . . . .

See Gazette of India, 1881, Pt. I, p. 504.

Ditto 1876, Pt. I, p. 505.

As to application of this Act, as being part of Act I of 1872, to other places, see the second footnote on p. 365, *supra*.

<sup>2</sup> Printed, *supra*, p. 357.

Amendment  
of section  
108.

9. In section 108 of the same Act, line 1, for the word "When," the words "Provided that when" shall be substituted; and, in the last line, for the word "on," the words "shifted to" shall be substituted.

Amendment  
of sections  
126 and 128.

10. In section 126 of the same Act, line 22, and in section 128 of the same Act, line 6, after the word "barrister," the word "pleader" shall be inserted.

In section 126 of the same Act, line 15, for the word "criminal," the word "illegal" shall be substituted.

Amendment  
of section  
155.

11. In section 155 of the same Act, paragraph (2), for the word "had," the word "accepted" shall be substituted.

12. [*Saving of Act XV of 1852, section 12.*] *Rep. by the Indian Oaths Act, 1873 (X of 1873).*

### ACT No. XIX OF 1872.<sup>1</sup>

[29th August 1872.]

An Act to amend the definition of "Coin" contained in the Indian Penal Code.

Preamble.

WHEREAS it is expedient to amend the definition of "coin" contained in the Indian Penal Code, section 230; It is hereby enacted as XLV of 1860. follows:—

Amendment  
of Act XLV  
of 1860,  
section 230.  
"Coin"  
defined.

1. For the first paragraph of the said section, the following shall be substituted:—

"230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used."

<sup>1</sup> Short title, The Indian Penal Code Amendment Act, 1872. *See the Indian Short Titles Act, 1897 (14 of 1897).*

For the Statement of Objects and Reasons, *see* Gazette of India, 1872, Pt. V, p. 612; for Proceedings in Council, *see* *ibid*, 1872, Supplement, pp. 860, 923 and 952.

This Act has been declared in force in—

the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code; Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. (The District of Lohardaga, now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. 1, p. 44, then included the Palaman District, separated in 1894). *See* Gazette of India, 1881, Pt. 1, p. 504.

The North-Western Provinces Tarai *see* Gazette of India, 1876, Pt. 1, p. 505.

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